United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANTS-PETITIONERS

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

436

Nos. 17,498; 17,499; 17,500

THE GOODWILL STATIONS, INC. and WGN, INC.,
Appellants-Petitioners

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee-Respondent

and

UNITED STATES OF AMERICA, *Respondent*

AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.,
MIDWEST RADIO-TELEVISION, INC.,
WESTINGHOUSE BROADCASTING CO., INC., ET. AL.,
Intervenors

Appeals from and Joint Petition to Review and Set Aside Orders of the Federal Communications Commission

United States Court of Appeals
for the District of Columbia Circuit

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Nathan J. Paulson
CLERK

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REED T. ROLLO
KELLEY E. GRIFFITH
R. RUSSELL EAGAN
800 World Center Building
Washington 6, D. C.
Attorneys for Appellants-Petitioners

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

STATEMENT OF QUESTIONS PRESENTED

The parties have stipulated that the following are the questions presented:

1. Did the Commission's Orders adopted September 13, 1961 and November 21, 1962 in Docket 6741 terminating a proceeding commenced as a general hearing to resolve issues, among others, raised by the fact that large areas of the U.S. were without primary standard broadcast service and by applications for power in excess of 50 kw and for operation of additional stations on Class I-A Clear Channel frequencies:

(a) Violate Section 307(b) or Section 303(f) of the Communications Act by authorizing one additional station to operate day and night on each of 13 of the 25 Class I-A frequencies and by refusing to amend the rule limiting the power of Class I-A stations to 50 kw,* thus providing improved nighttime service to a maximum of only 600,000 of the over 25 million people living in over half of the land area of the continental U.S. who do not receive a single acceptable nighttime primary service and denying improved nighttime service to almost 25 million people by refusing to authorize Class I-A stations to operate with power in excess of 50 kw?

(b) Erroneously fail to give due consideration to H. Res. 714 passed July 2, 1962 which expressed the sense of the House of Representatives that (1) the Commission was free, notwithstanding a 1938 Senate Resolution to the contrary, to authorize power in excess of 50 kw, if found to be in the public interest, and (2) the Commission should not authorize any additional fulltime stations on any of the 25 Class I-A frequencies for a period of a year so that the Commission would have an opportunity to reconsider its September 13, 1961 Order in light of H. Res. 714 and so that Class I-A stations would have an opportunity to file applications for higher power?

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* Appellee-Respondents and Intervenors Transcontinent Television Corporation, Midwest Radio-Television, Inc., American Broadcasting-Paramount Theatres, Inc., WXYZ, Inc., WLS, Inc., and City of New York Municipal Broadcasting System (WNYC) believe that Issue 1(a) should terminate at this point.

(c) Erroneously deny the licensees of WJR (Detroit, Michigan) and WGN (Chicago, Illinois) hearing rights under Sections 303(f), 309(e) or 316 of the Communications Act by deciding to permit (1) KFMB (San Diego, California) to operate fulltime on the Class I-A frequency (760 kc) assigned to WJR, and (2) a yet to be determined station located in Idaho or Nevada to operate fulltime on the Class I-A frequency (720 kc) assigned to WGN?

(d) Erroneously make findings and conclusions unsupported by record evidence or erroneously fail to set forth (1) rational reasons supporting the decision, or (2) findings supporting the conclusions?

2. Did the Commission's Order adopted November 21, 1962, which, without a hearing, denied petitions filed by the licensees of WJR and WGN requesting that pertinent rules be waived and accompanying applications to increase power from 50 kw to 750 kw be accepted for filing in accordance with Rules 1.15 and 1.307(a):

(a) Erroneously deny the licensees of WJR and WGN their rights to a Section 309(e) hearing on their 750 kw applications by failing to (1) set forth rational reasons demonstrating that WJR and WGN had failed to allege reasons, sufficient if true, to justify a waiver of the pertinent rules, and (2) give due consideration to H. Res. 714 passed July 2, 1962?

(b) Erroneously fail to accord the licensees of WJR and WGN a hearing before denying their petitions to waive pertinent rules and accept for filing their 750 kw applications?

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BRIEF FOR APPELLANTS-PETITIONERS

PRELIMINARY STATEMENT

More than 25 million people in the continental United States do not receive any acceptable primary radio service at night and depend upon the secondary or skywave service of Clear Channel stations such as WJR and WGN for their only nighttime radio service.*

When the Federal Communications Commission adopted its present system of broadcast allocations in 1939, it incorporated the concept of stations operating at high power on clear channels, which were designed "to render wide area service to remote communities and rural areas not reached by other AM stations." The Clear Channel concept originated in 1923 with the Secretary of Commerce and Labor under the Radio Act of 1912 and, in turn, was carried forward by the Federal Radio Commission in 1928. As recently as 1958, the FCC confirmed that "improvement of nighttime service throughout most of the existing white areas must be provided, if at all, by new or improved skywave service."

The orders challenged by WJR and WGN substantially discard the Clear Channel concept without promulgating any substitute to ensure at least one nighttime radio service for the large and populous white areas of the country.

At issue, therefore, is the legality of separate but related orders issued by the Federal Communications Commission, which reduce the number of Class I-A Clear Channel standard broadcast stations authorized to operate in the United States and fix the maximum, permissible operating power for all Clear Channel stations at 50 kw. Specifically, by these orders the FCC (1) amended its Rules and Regulations to duplicate 13 of the 25 presently allocated Class I-A Clear Channel frequencies by assigning one additional standard broadcast station to each of the 13 frequencies duplicated; (2) perpetuated the existing Rule that limits the operating power of Class I-A Clear Channel stations to 50 kw; (3) denied and returned, without holding a hearing of any kind, the applications of WJR and WGN, currently licensed on 2 of the 13 frequencies duplicated by the Commission, for increases in their operating power from 50 to 750 kw; and (4) denied, also without a hearing, the petitions for waiver of certain Rules and Regulations, which accompanied the applications.

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* The Goodwill Stations, Inc. is the licensee of WJR, a Class I-A Clear Channel station operating on 760 kc at Detroit, Michigan; WGN, Inc. is the licensee of WGN, also a Class I-A Clear Channel station, operating on 720 kc at Chicago, Illinois.

As detailed below, the effect of these orders will be to nullify the Congressional mandate that the FCC establish a "fair, efficient, and equitable distribution of radio service" throughout the United States, and the Commission's own public interest determination that Class I-A Clear Channel stations "render wide area service to remote communities and rural areas *not reached by other AM stations.*"[1]

JURISDICTIONAL STATEMENT

Nos. 17,498 & 17,499: On November 27, 1962, the Federal Communications Commission released an order denying and returning, without a hearing, the applications of WJR and WGN for increased operating power and the accompanying petitions for waiver of the Commission's Rules. (R. 5071-73) Separate notices of appeal were timely filed by WJR and WGN on December 27, 1962, pursuant to Section 402(b) of the Communications Act of 1934 and Section 10 of the Administrative Procedure Act. 47 U.S.C. § 402(b); 5 U.S.C. § 1009, respectively.

No. 17,500: On September 14, 1961, the Federal Communications Commission released an order that duplicated 13 of 25 Class I-A Clear Channel standard broadcast frequencies and refused to authorize operating power in excess of 50 kw. (R. 4085-4146) Petition for reconsideration of this order was timely filed by petitioners on October 16, 1961, and was denied in all respects by the Commission on November 28, 1962. (R. 4925-48) A joint petition for review was timely filed by WJR and WGN on December 27, 1962, pursuant to Sections 402(a) and 405 of the Communications Act of 1934, Sections 2 and 4 of the Judicial Review Act of 1950 and Section 10 of the Administrative Procedure Act. 47 U.S.C. §§ 402(a), 405; 5 U.S.C. §§ 1032, 1034; 5 U.S.C. § 1009, respectively.[2]

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[1] 47 U.S.C. § 307(b); 24 FCC Ann. Rep. 112 (1958).

STATEMENT OF THE CASE

I. TECHNICAL AND HISTORICAL BACKGROUND OF CLEAR CHANNEL CONCEPT

A. Physical Characteristics of Groundwave and Skywave Signals

In the standard broadcast band, stations radiate both groundwave and skywave signals at all times. Both types of signals can provide broadcast service as well as constitute a source of interference. Groundwaves generally follow the curvature of the earth and are of the same strength irrespective of the time of day. Skywaves are radiated in straight lines from the transmitting antenna directly into space, where they are partially absorbed and partially refracted back to the surface of the earth by the ionized layer of the upper atmosphere known as the ionosphere. Because of the differences between the daytime and nighttime refraction properties of the ionsphere, the strength of skywave signals varies and is strongest at night.

Groundwave signals provide a dependable but circumscribed[3] *primary* service so long as the signal strength, which diminishes with distance, is strong enough to overcome such things as atmospheric and man-made noise and interfering signals from other stations. During the daytime service is rendered almost exclusively by the groundwave signal, for at these hours the skywave signal is too inefficient to be relied on to render a useful broadcast service. In the nighttime, when the ionosphere acts as a more reliable reflecting medium, the skywave signal is much stronger and is capable not only of providing a useful *secondary* service, but can do so at distances significantly greater than is possible by the groundwave signal. At the same time, the increased efficiency of the skywave signal in relation to the time of day complicates the problem of interference between stations.

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[2] On February 25, 1963, the FCC filed a motion requesting *partial* dismissal of the Section 402(b) appeals and the Section 402(a) petition for review on the ground that these sections provide mutually exclusive avenues for obtaining judicial review of orders of the Federal Communications Commission. An opposition to this motion was filed by WJR and WGN on March 4, 1963.

The FCC has admitted that the Court's ruling on the motion will not affect any of the issues raised in the cases as consolidated, in response to a prior motion filed by the Commission on January 24, 1963.

[3] For example, the primary service area of WJR reaches out approximately 120 miles, while the comparable service area of WGN extends approximately 220 miles.

By reason of the physical characteristics of radio signals and the territorial expanse of the United States, only high-power stations operating on clear channels can provide skywave service at night to large areas of the nation that otherwise would not be served at all, although such stations cannot serve areas of comparable dimension in the daytime because of less efficient skywave propagation.[4] Since simultaneous operation on these channels at night by more than one station would cause destructive interference, co-channel stations have to employ such measures as are necessary to protect the nighttime skywave service of the dominant station.

B. Establishment of Clear Channel Frequencies

Thus, from the outset of standard broadcasting in this country, it has been acknowledged that radio service could be furnished rural areas and remote communities only by assigning one high powered station to a number of clear frequencies. Otherwise, nighttime radio service would not be available to the numerous areas beyond the limited range of groundwave service.

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[4] See Appendix A of this Brief, which depicts the nighttime radio service available in the continental United States as of January 1, 1957.

From 1926 until the creation of the Federal Radio Commission in 1928, broadcast stations actually operated on whatever frequency and at whatever hours and power they desired, since the Radio Act of 1912 was held to confer no authority on the Secretary of Commerce and Labor to impose restrictions as to frequency, power or hours of operation.[5] The result of this statutory gap was the virtual elimination of all nighttime radio service beyond the immediate area of particular cities in which stations were located, even though Secretary Hoover had promulgated regulations in 1923 establishing 40 Clear Channel frequencies.[6]

The Radio Act of 1928 closed the loophole of the 1912 Act and the very first allocation adopted by the Federal Radio Commission set aside 40 Clear Channel frequencies on which only one station was to operate at night.[7] The Commission explained that its action was designed to ensure "clear reception of the station's program" for "distant or rural service." 2 FRC Ann. Rep. 214-15 (1928).

In 1934, the Federal Communications Commission replaced the Federal Radio Commission as the licensing authority and it carried forward intact the Clear Channel allocations.[8]

Between 1928 and 1934, 10 of the original Clear Channels had been eliminated by "duplication," the assignment of one or more additional fulltime stations to each frequency. By 1945, all but 25 of the Clear Channels had been eliminated by duplication. The remaining 25 are now referred to as Class I-A Clear Channels,[9] while the duplicated Clear Channel frequencies, on which 3 to 11 fulltime stations are currently authorized to operate, are known as Class I-B Clear Channels.[10]

---

[5] See *United States* v. *Zenith Radio Corp.*, 12 F. 2d 614 (N.D. Ill. 1926); *cf. Carmichael* v. *Anderson*, 14 F. 2d 166 (W.D. Mo. 1926); 35 Ops. Att'y. Gen. 126 (1926). The Secretary of Commerce and Labor had been issuing broadcast licenses specifying frequency, power and hours of operation from 1921 until 1926.

[6] Radio Service Bulletin 73 (May 1923).

[7] FRC General Order 40.

[8] See 47 U.S.C. § 640(a).

C. Clear Channel Station Operating Power

In 1924, the maximum permissible operating power of Clear Channel stations was increased by the Secretary of Commerce and Labor from 1 to 5 kw.[11] By 1928, the maximum had been increased from 5 to 25 kw, while 50 kw was authorized on an experimental basis. By 1930, 50 kw had been authorized by the Federal Radio Commission for 20 of the then 40 Clear Channels; in 1933, the remaining 20 were authorized to operate at 50 kw. Since 1933, the power of all Clear Channel stations has been limited to 50 kw, although WLW, Cincinnati, Ohio, was authorized to operate at 500 kw on an experimental basis from 1934 to 1939.

In the first 6 months of 1936, 9 Clear Channel stations, including WJR and WGN, filed applications with the FCC requesting authority to operate at 500 kw.[12] The Commission instituted a general hearing on these applications in 1936 to determine whether the 50 kw power ceiling should be removed. FCC Dkt. No. 4063.

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[9] Actually, one of the 25 Class I-A frequencies was eliminated in 1941 when a second fulltime station was authorized to operate on 770 kc on a "temporary" basis that has continued to date.

See Appendix B of this Brief, which lists the 25 Clear Channel stations presently licensed.

[10] Of the 107 channels in the standard broadcast band (535-1605 kc), 25 are Class I-A Clear Channels, 14 are foreign I-A Clear Channels, 19 are I-B Clear Channels, 2 are foreign I-B Clear Channels, 41 are Regional Channels (on each of which 13 to 25 fulltime stations operate) and 6 are local channels (on each of which 132 to 160 fulltime stations operate).

[11] Radio Service Bulletin 92, p. 4 (Dec. 1, 1924).

[12] FCC Dkt. Nos. 3963, 3985, 4095, 4091, 4092, 4110, 4230, 4419 & 5322.

Following this hearing, the FCC's Engineering Department issued a report on January 11, 1937, which summarized as follows the considerations bearing on higher power:

> While we believe that powers in excess of 50 kw on clear channels are technically sound and are in accord with scientific progress, we recognize that social and economic factors involved in the use of 50 kw may outweigh in importance engineering considerations, and request instructions from the Division as to its desire with respect to regulations on the question of super-power. * * *
>
> We feel that there is a need for increased signal intensity and have recommended that in general power increases are required to better the service to the public. However, we recommend that the regulations in this respect be sufficiently flexible to permit the Commission to judge each individual case upon its merits, particularly as to the needs and economic and social circumstances. Rep. at p. 8.

On July 1, 1937, the Engineering Department submitted its Report on Social and Economic Data, which concluded as follows:

> * * * we feel that no one should fear technical progress, and therefore we see no logical reason for an arbitrary defensive regulation which would prevent the future use of power in excess of 50 kw in the event that evidence and data should show conclusively that such power in certain individual cases is in the interest of the public. It should be noted that in this connection other nations on this continent have licensed stations to use powers greatly in excess of 50 kw and sight should not be lost of this fact from either a technical or economic standpoint. Rep. at p. 120.

The Commission, however, left the power ceiling intact and the proceeding was terminated.

A second Clear Channel hearing was held in 1938 before a special committee of three Commissioners. Among other things, the committee considered rule changes proposed in the 1936 proceeding. FCC Dkt. No. 5072-A. Once more the Clear Channel stations, including WJR and WGN, proposed removal of the 50 kw power limitation.

Following this hearing, the committee issued a report as follows respecting the use of higher power:

> The evidence shows conclusively that, from a technical standpoint, the use of power in excess of 50 kw has a distinct advantage because it provides better quality service to the vast population residing in rural areas and in towns which neither have broadcasting stations of their own nor are located within the primary service areas of any station. The public residing under these circumstances must now rely for their only program service upon distant clear channel stations having not more than 50 kw power. Therefore, from a technical standpoint, it is safe to conclude that the higher signal intensities produced by greater kilowatt power, with the consequent improvement in technical service, tends to equalize the quality of service rendered to the population in rural areas as compared to the service rendered the population in urban communities more fortunately equipped with broadcast transmission facilities of their own.
>
> The evidence indicates that there would be no difficulty in securing economic support for the operation of 500 kw stations in the principal markets of the country. However, there is doubt as to whether the necessary number of competitive 500 kw stations could be supported economically in the sections of the country where the need for improvement in signal intensity in rural areas is the greatest. Rep. at Part I.

The Report concluded:

> The evidence to date is far too meager to warrant this Commission's advocating super power as the only means of improving service to the rural listeners of the nation. * * * At a later date the subject of super power may be reopened and decided more positively upon the basis of more accurate evidence and experience than is available at present.

The nine 500 kw applications that had been filed in 1936 were dismissed without prejudice on June 16, 1942.

II. THE COMMISSION UNDERTAKES TO IMPROVE SERVICE TO WHITE AREAS

A. The 1945 Hearing Order in Docket 6741

On February 20, 1945, the Commission *sua sponte* instituted a general hearing respecting improvement and extension of service to the vast areas of the United States that did not receive any primary standard broadcast service. (R. A-C)[13] In relevant part, the hearing issues were specified as follows (R. A-B):

> 2. Whether the number of clear channels should be increased or decreased and what frequencies in the standard broadcast band shall be designated as I-A channels and as I-B channels.
>
> 3. What minimum power and what maximum power should be required or authorized for operation on clear channels.
>
> 4. Whether and to what extent the authorization of power for clear channel stations in excess of 50,000 watts would unfavorably affect the economic ability of other stations to operate in the public interest.
>
> 8. What changes the Commission should order with respect to geographical location, frequency, authorized power or hours of operation of any presently licensed clear channel station.

B. The Purpose of the Proceeding

The Commission's February 20 Order (R. A-C) and the accompanying News Release (No. 80659) made it clear that the primary purpose of the proceeding was to find a solution to the problem of providing reliable standard broadcast service to *all* residents of the continental United States. As was explained by former Chairman Denny during the course of the hearings:

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[13] Prior to the institution of this proceeding several applications had been filed by Clear Channel stations for operating power in excess of 50 kw. The applications were dismissed on February 1, 1946. See FCC Public Notice 89273 (Feb. 5, 1946).

> Your testimony recognizes the reason that the Commission has called this hearing: that the statute under which we operate has a provision in it requiring the Commission to take steps to insure an equitable distribution of radio service between the several states and their communities, and we have called this hearing to get the facts as of 1946, as to what the coverage situation is in the United States, to find out where the blank spots are in that coverage, and to canvass the situation and see what can be done about filling in those blank spots so that we will have full nation-wide coverage of all states and all communities, which is the Commission's objective in this proceeding. (Tr. 3922)
>
> The Commission proposes in this proceeding to do whatever can be done to improve coverage generally in the United States. There are clearly some changes and adjustments which can be made that will improve coverage, and it will be very helpful to the Commission if the parties to this proceeding will come forward with affirmative, constructive suggestions looking towards the over-all betterment of broadcasting service in the United States. (Tr. 1827)

Between January 14, 1946 and October 31, 1947, forty hearing sessions were held before the Commission *en banc* or before individual Commissioners. The record consisted of over 6,000 pages of testimony and some 400 technical and statistical exhibits. Briefs were filed by the parties on January 12, 1948 and oral argument was heard by the Commission *en banc* on January 19, 20, and 21, 1948.

The record amassed in the 1946 and 1947 hearings demonstated that as of January 1947 more than 23 million people residing in approximately 61 per cent of the land area of the continental United States did not receive any satisfactory nighttime groundwave service.[14] Nonetheless, the only concrete proposal for improving service to these communities, so-called "white" areas, was submitted by

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[14] See Exhibit 339, pp. 13ff., Table V and Exhibit 340, Figure 2b.

Clear Channel Broadcasting Service (CCBS), of which WJR and WGN are members.[15] CCBS urged retention of all existing Class I-A frequencies and the authorization of operating power in excess of 50 kw for a minimum of 20 Class I-A stations.

Proposals were advanced by others to retain the 50 kw power ceiling and to duplicate all Class I-A frequencies by the assignment of additional fulltime stations, although there was no demonstration as to how any of these proposals would actually improve service to the so-called white areas.

C. The 1958 Further Notice in Docket 6741

After the 1948 oral argument, the Commission took no further action for 10 years.

Then, on April 15, 1958, the Commission issued a Further Notice of Proposed Rule Making (R. 1-29, 34), which requested comments on several proposals, including the following:

1. Retention of the 50 kw power ceiling with respect to 13 of the 25 Class I-A frequencies, including 720 kc, the frequency assigned to WGN,[16] and the authorization of one additional fulltime station on each of the 13 frequencies.

2. Maintenance of the status quo regarding the remaining 12 Class I-A frequencies, including 760 kc, the frequency assigned to WJR, and deferral of a decision as to whether power in excess of 50 kw should be authorized for the Class I-A stations operating on the 12 frequencies.

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[15] CCBS is an association of 13 independently owned and operated Class I-A Clear Channel stations. Its proposal is set forth at Tr. 4945ff. See also Exhibit 339, pp. 45ff.; Exhibit 340, Figures 41, 45. See Appendix C to this Brief.

[16] The proposed duplication of 720 kc was to be accomplished by assigning a new fulltime station at a location from which the new station "could place a first primary service in white areas." Par. 60 of Further Notice (April 15, 1958).

WGN, individually and as a member of CCBS, and WJR, as a member of CCBS, filed comments on August 15, 1958 (R. 210-84, 295-779) and reply comments on October 29, 1958 (R. 1427-52, 1586-89), opposing the proposals and advocating the authorization of higher power for all Class I-A stations as the only feasible means of improving service to the white areas.[17] In its comments, CCBS included a showing that, although the land area of the continental United States without any satisfactory primary service had decreased from 60.6 per cent in 1947 to 57.9 in 1957, the number of people living in white areas had increased from 23.2 million to 25.6 in the same period.[18]

D. The 1959 Third Notice in Docket 6741

On September 22, 1959, the Commission released a Third Notice of Further Rule Making (R. 1793-1815), which requested comments on the following proposals:

1. Deferral of a decision to authorize power in excess of 50 kw with respect to all 25 Class I-A frequencies.

2. Authorization of one additional fulltime station on 23 of the 25 Class I-A frequencies,[19] including the frequencies licensed to WJR and WGN.[20]

WJR, individually and as a member of CCBS, and WGN, as a member of CCBS, filed comments on April 1, 1960 (R. 2975-85, 3184-3409) and, individually and as members of CCBS, both filed reply comments on June 1, 1960 (R. 3511-21, 3640-53, 3664-3707), opposing the newest proposals and reiterating their previous position that service to white areas could be improved only through the authorization of power in excess of 50 kw for Class I-A stations.

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[17] See Appendix C and D to this Brief, which depict, respectively, the nighttime service that would be available throughout the United States if all existing Clear Channel stations operated at 750 kw and the location of the stations with respect to population distribution.

[18] During this period the number of fulltime station had increased by 536, from 1,339 to 1,875.

[19] The two Class I-A frequencies excluded, 660 and 770 kc, had already been assigned two fulltime stations.

[20] The proposed fulltime stations on 760 and 720 kc were to be located in the states of Idaho and Utah, respectively.

E. The 1961 Report and Order in Docket 6741

On June 13, 1961, the Commission issued a Press Release (P.N. B-6295), announcing that the Commission had instructed its staff to prepare a Report and Order that would terminate Docket 6741 "by rule amendments opening the way to the assignment of one unlimited time Class II station on each of 13 Class I-A clear channels * * * to provide service to underserved or white areas * * *." Among the 13 channels to be duplicated were 720 kc, to which a station located in Nevada or Idaho was to be assigned, and 760 kc, to which a station in San Diego, California, was to be assigned.

Shortly thereafter, bills were introduced in Congress looking toward prohibiting any duplication of the 25 Class I-A frequencies beyond that authorized as of July 1, 1961, and looking toward directing the Commission to authorize power in excess of 50 kw for Class I-A stations.[21]

On February 7, 1961, the Chairman of the House Interstate and Foreign Commerce Committee sent a letter to the Chairman of the FCC requesting that the Commission postpone adopting any final order in Docket 6741, "until the expiration of a reasonable time after the reconvening of the Congress in January 1962 * * * in order to give the committee an opportunity * * * to conduct some hearings on several bills which have been introduced and referred to the committee affecting Clear Channel operations * * *." (R. 4081-82) Nevertheless, on September 14, 1961, the

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[21] See S. 2290 introduced July 20, 1961 and the following House bills introduced in July of 1961: H.R. 8210, H.R. 8211, H.R. 8228 and H.R. 8274. See also statements of Senator Douglas (107 Cong. Rec. 11432-33); Congressman Bennett (107 Cong. Rec. 11986-87); Senator Capehart (107 Cong. Rec. 12031-32); Senator Miller (107 Cong. Rec. 12032-33); Senator Keating (107 Cong. Rec. 12032); Congressman Loser (107 Cong. Rec. A1058); and Senator Symington (108 Cong. Rec. 21896-97).

Commission released a Report and Order terminating Docket 6741 by amending its rules, effective October 30, 1961, in the following respects (R. 4085-4146):

1. Authorized one additional fulltime station on 13 of the 25 Class I-A frequencies, including 760 kc licensed to WJR and 720 kc licensed to WGN.[22] Specifically, Rules 3.21(a) and 3.25(a)(3) were amended to authorize the fulltime operation of KFMB, San Diego, California, on 760 kc with maximum power of 5 kw, subject to the provision that KFMB protect the 0.1 mv/m daytime groundwave and 0.5 mv/m nighttime 50 per cent skywave contours of WJR operating with power of 50 kw.[23] Rules 3.22(a) and 3.182(a) were amended to authorize the operation of a fulltime station located in Nevada or Idaho on 720 kc, with the provisions that the new station protect the 0.1 mv/m daytime groundwave and 0.5 mv/m nighttime skywave 50 per cent contours of WGN operating at 50 kw and provide a first nighttime primary service to either 25 per cent of

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[22] The 13 duplications are as follows:

	Frequency (kc)	Class I-A Station	Location of Proposed Class II Station
1.	670	WMAQ, Chicago, Ill.	Idaho
2.	720	WGN, Chicago, Ill.	Nevada or Idaho
3.	750	WSB, Atlanta, Ga.	Anchorage, Alaska
4.	760	WJR, Detroit, Mich.	San Diego, Calif.
5.	780	WBBM, Chicago, Ill.	Nevada
6.	880	WCBS, New York, N. Y.	N.D., S.D., or Nebr.
7.	890	WLS, Chicago, Ill.	Utah
8.	1020	KDKA, Pittsburgh, Pa.	New Mexico
9.	1030	WBZ, Boston, Mass.	Wyoming
10.	1100	KYW, Cleveland, Ohio	Colorado
11.	1120	KMOX, St. Louis, Mo.	Calif. or Oregon
12.	1180	WHAM, Rochester, N. Y.	Montana
13.	1210	WCAU, Philadelphia, Pa.	Kansas, Nebr. or Okla.

[23] On October 4, 1961, the Commission granted the renewal application of WJR, which had been filed on June 21, 1961, subject to the following condition: "* * * operation under this renewal is subject to whatever interference may be caused to Station WJR, outside of its 0.5 mv/m 50 per cent skywave contour, by a co-channel unlimited time Class II station assigned to San Diego, California, pursuant to Report and Order in Docket 6741 adopted September 13, 1961 (Clear Channel case)." (R. 5033)

its nighttime interference free primary service area or to 25 per cent of the population residing therein.[24]

2. Deferred any decision to authorize duplication or power in excess of 50 kw with respect to the remaining 12 Class I-A frequencies.[25]

On October 16, 1961, WGN and WJR each filed a Petition for Reconsideration and Conditional Request for Evidentiary Hearing, and, as members of CCBS, filed a Petition for Rehearing. (R. 4200-4294, 4357-4409) The petitions contended that the rules could not be amended to authorize the operation of additional fulltime stations on any of the 25 Class I-A frequencies, including 720 and 760 kc, without first affording the licensees of the affected stations an adjudicatory hearing. WJR and WGN each demanded such a hearing in the event the Commission failed, upon reconsideration, to set aside the duplications of 760 and 720 kc. The Commission's attention was again directed to the fact that the only feasible means of improving service to white areas was through the authorization of power in excess of 50 kw for Class I-A stations. An engineering analysis was submitted, which estimated that if the 13 Class I-A frequencies were duplicated as contemplated, no improvement in nighttime skywave service would be afforded to the more than 25 million persons residing in white areas; no new nighttime primary service would be afforded to the more than 18 million persons living in white areas located east of the Mississippi River; and a new nighttime primary service would be provided to only some 235,000[26] of the more than 7 million persons living in white areas located west of the Mississippi River.

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[24] On January 3, 1962, the Commission granted the renewal application of WGN, which had been filed on September 5, 1961. (R. 5145-47)

[25] See 1961 Order, Par. 18, cf. Pars. 20, 21, 25.

[26] During House hearings held in February of 1962 on H.R. 8210, et al., the Chairman of the FCC testified that "at least" 600,000 of the white area residents living west of the Mississippi River would receive their first nighttime primary service. (Page 235 of Hearings held February 1, 2 and 13, 1962 on H.R. 8210, et al.).

F. H.R. Res. 714 Is Passed on July 2, 1962

On February 1, 2 and 13, 1962, hearings were held before a subcommittee of the House Committee on Interstate and Foreign Commerce with respect to the House bills introduced in July of 1961 looking toward prohibiting duplication of any of the 25 Class I-A frequencies and the authorization of power in excess of 50 kw for Class I-A stations. On June 29, 1962, the House Committee on Interstate and Foreign Commerce favorably reported out H.R. Res. 714, H.R. Rep. No. 1954, which was passed on July 2, 1962. H.R. Res. 714 expressed the sense of the House of Representatives that (1) the Commission was free, notwithstanding a 1938 Senate resolution to the contrary, to authorize power in excess of 50 kw if found to be in the public interest, and (2) the Commission should not authorize any additional fulltime stations on any of the 25 Class I-A frequencies for a period of a year so that the Commission would have an opportunity to reconsider its Report and Order in light of H.R. Res. 714 and so that Class I-A stations would have an opportunity to file applications for higher power.

G. The Filing of Higher Power Applications

On October 22, 1962 and November 13, 1962, WJR and WGN, respectively, filed applications with the Commission requesting authority to operate at 750 kw, each of which was accompanied by a petition to waive the rules and to accept the application for filing.[27]

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[27] An article appearing at page 27 of the October 15, 1962 issue of *Broadcasting* magazine gave notice of the fact that members of CCBS planned to file applications seeking authority to operate with power in excess of 50 kw. The magazine also reported that "one highly placed FCC official" stated that "Clear Channel stations which plan to file applications for higher power * * * will be wasting their time and money * * *" and that "some Clear Channel outlets have discussed application proposals with FCC and were advised not to file * * *." *Op. cit. supra*, p. 5.

H. The 1962 Orders

Finally, on November 21, 1962, the Commission adopted two separate Memorandum Opinions and Orders that (1) reaffirmed its Report and Order released September 14, 1961 in Docket 6741 (R. 4925-48), and (2) denied the petitions for waiver filed by WJR and WGN and returned their applications. (R. 5071-73)

STATUTES INVOLVED

The pertinent provisions of the Communications Act of 1934 are as follows:

Section 1, which details the purposes of the Act provides

> For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter. 47 U.S.C. § 151.

Section 303, which details the powers and duties of the Commission, provides in part

> (f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this chapter: *Provided, however,* That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent

> of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this chapter will be more fully complied with. 47 U.S.C. § 303(f).

Section 307, which relates to the allocation of radio facilities, provides in part

> (b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same. 47 U.S.C. § 307(b).

Section 309, which relates to applications for licenses, provides in part

> (a) Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which section 308 of this title applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.
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> * * * * * * * * *
>
> (e) If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not

> including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission. 47 U.S.C. § 309(a), (e).

Section 316, which relates to the modification of station licenses, provides in part

> (a) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue: *Provided,* That where safety of life or property is involved, the Commission may by order provide for a shorter period of notice. 47 U.S.C. § 316(a).

Section 9 of the Administrative Procedure Act provides in part

> (b) In any case in which application is made for a license required by law the agency, with due regard

to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 1006 and 1007 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency. 5 U.S.C. § 1008(b).

STATEMENT OF POINTS

1. The Commission's orders in Docket 6741, which duplicated 13 of the existing 25 Class I-A Clear Channel frequencies and refused to authorize operating power in excess of 50 kw, are unlawful because they effectively deny improved service to all but 600,000 of the more than 25 million persons who do not receive any acceptable nighttime primary service.

2. The Commission's duplication of 13 of the existing 25 Class I-A Clear Channel frequencies and refusal to authorize operating power in excess of 50 kw are unlawful because they are not supported by findings, by evidence of record or by rational or adequate reasons.

3. The Commission's duplication of the Class I-A frequencies assigned to WJR and WGN is unlawful because it modified the licenses of WGN and WJR without affording them the required public notice and hearing.

4. The Commission's denial of the petitions of WJR and WGN for waiver and its dismissal of the applications of WJR and WGN for 750 kw were unlawful because they were made without the required hearing.

SUMMARY OF ARGUMENT

The Commission instituted hearings in Docket 6741 in order to solve the identical problem that had been explored in 1936 and 1938, namely, the problem of providing improved service to vast and populous sections of the country known as white areas or areas that do not receive any satisfactory nighttime primary radio service.

The record shows that service to most of the more than 25 million people living in white areas can be improved *only* by either the enhancement of existing nighttime skywave service or by the creation of new skywave service.

The Commission's decision to "solve" the white area problem by retaining the 50 kw power ceiling with respect to all 25 Class I-A frequencies and by duplicating 13 of the existing Class I-A frequencies violated Sections 303(f) and 307(b) of the Communications Act because (1) existing nighttime skywave service to white areas will be degraded rather than improved, (2) no new nighttime skywave service will be provided to any portion of the white areas, and (3) no more than 600,000 of the more than 25 million white area residents will receive an acceptable nighttime primary service for the first time. Such a result does not comport with the Commission's duty to effect a "fair, efficient, and equitable distribution of radio service" in the United States.

The Commission erroneously concluded that duplication would result in a meaningful improvement of service to white areas; erroneously concluded that there was an insufficient record basis for authorizing power in excess of 50 kw and that "further studies" of the higher power issue were required; erroneously concluded that duplication would not impair national defense preparedness; erroneously concluded that duplication of the frequencies assigned to WJR and WGN, 760 kc and 720 kc, would serve the public interest; and erroneously concluded that higher power potential had been preserved with respect to a sufficient number of Class I-A frequencies to insure that at least four acceptable nighttime services could be provided to practically all of the white areas should higher power be authorized in the future.

In reconsidering its 1961 Report and Order, the Commission disregarded H.R. Res. 714, which expressed the sense of the House of Representatives that the Commission should forego any further duplication of the 25 Class I-A frequencies beyond that authorized as of July 1, 1961 for a period of one year in order that (1) the Commission could reconsider its 1961 Report and Order in light of H.R. Res. 714, which expressed the sense of the House that the Commission should authorize higher power if found to be in the public interest, and (2) the Clear Channel stations would have an opportunity to file applications seeking power in excess of 50 kw.

The Commission's orders amending the Rules so as to authorize additional fulltime stations to operate on 760 kc and 720 kc, the Class I-A frequencies assigned to WJR and WGN, were unlawful because WJR and WGN were not given notice or afforded an opportunity to be heard on specific proposals to duplicate their frequencies.

The Commission's denial of the WJR and WGN petitions to waive the rules and accept for filing their applications for 750 kw were unlawful because the Commission denied the applications without a hearing, in violation of Section 309(e) of the Communications Act. *United States* v. *Storer Broadcasting Co.,* 351 U.S. 192 (1956). The Commission can dismiss an application not in compliance with its rules *only* if the application fails to allege reasons, sufficient if true, to justify a waiver of the pertinent rules.

ARGUMENT

I. THE COMMISSION'S REFUSAL TO AUTHORIZE POWER IN EXCESS OF 50 KW, COMBINED WITH ITS DUPLICATION OF 13 OF THE 25 CLASS I-A FREQUENCIES, VIOLATED SECTIONS 307(b) AND 303(f) OF THE COMMUNICATIONS ACT BECAUSE THE ACTIONS DENY IMPROVED SERVICE TO ALL BUT 600,000 OF THE MORE THAN 25 MILLION PERSONS NOW WITHOUT ANY ACCEPTABLE NIGHTTIME PRIMARY SERVICE.

Exercising its power to regulate commerce, "the Congress established the Commission as its instrumentality to provide continuous and expert supervision and to exercise the administrative judgment essential in applying legislative standards to a host" of problems concerning the development of radio in the public interest. *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 U.S. 266, 276 (1933). The Communications Act of 1934 accordingly enacts a pervasive regulatory scheme "to secure the maximum benefits of radio to all of the people of the United States" and entrusts the FCC "with comprehensive powers to promote and realize the vast potentialities of radio." *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 217 (1943).[28] Title III of the Act directs the Commission to "generally encourage the larger and more effective use of radio in the public interest" and vests the Commission with authority to "assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use * * *." 47 U.S.C. § 303(c), (g). To these ends, the FCC is charged with making rules and regulations as the "public convenience, interest, or necessity requires" "to carry out the provisions of this Act * * *." 47 U.S.C. § 303(r). Especially pertinent here, the Commission is also charged with making "such regulations * * * as it may deem necessary to prevent interference between stations" and "such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service * * *." 47 U.S.C. §§ 303(f), 307(b).

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[28] See also *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.*, 289 U.S. 266, 276 (1933); *Regents* v. *Carroll*, 338 U.S. 586, 598 (1950); *Benanti* v. *United States*, 355 U.S. 96, 104 (1957); *Farmers Educ. & Co-op Union* v. *WDAY, Inc.*, 360 U.S. 525, 529 (1959).

Extensive curtailment of service or failure to provide any service obviously cannot secure the ends of the Act or facilitate the equitable apportionment of radio services in accordance with Section 307(b) of the Act. Cf. *Hall* v. *FCC*, 99 App. D.C. 86, 91, 237 F. 2d 567, 572 (1956). When measured against the standards enacted by Congress, the Commission's orders are clearly fatally defective.

To begin with, however much "administrative expertise is to be respected, especially in so technical a field as this," courts cannot "blind" themselves to the plain error of an arbitrary administrative decision. Cf. *W. S. Butterfield Theatres, Inc.* v. *FCC*, 99 App. D.C. 71, 76, 237 F. 2d 552, 557 (1956); *Hall* v. *FCC, id.* at 93-94, 237 F. 2d at 574-75. Argument is hardly necessary to support the simple proposition that arbitrariness has no place in any administrative decision. Hence, even though courts may ordinarily be loath to set aside administrative decisions on highly technical matters, the law sets some limit beyond which the agency cannot go. Here as the evidence so clearly demonstrates, the Commission failed to afford vast and populous areas of the nation the radio service to which they are undoubtedly entitled and, at the same time, drastically impaired the only means whereby such service could be assured.

Thus, the Commission instituted the Clear Channel proceeding in 1945 in order "to insure an equitable distribution of radio service" and to ascertain "what can be done about filling in those blank spots so that we will have full nation-wide coverage of all states and all communities." (Tr. 3922) At this time, approximately 11 years after its creation, the Commission still had not effected an equitable distribution of radio service throughout the United States, let alone its announced intention of providing at least 4 radio services everywhere. Prior inquiries by the Commission had not formulated any solution for the large populous areas of the nation that received no radio service at all during the daytime and no primary radio service at night. Although the assignment of additional broadcast stations since 1945 had virtually eliminated daytime white areas, there remained vast nighttime white areas.

The extent of these nighttime white areas is as follows:

WHITE AREA SIZE[29]

Year	No. Fulltime Stations	White Areas (Sq. Miles)	% U.S. Land Area	White Area Population
1947	1,339	1,802,665	60.6	23,252,200
1957	1,875	1,725,095	57.9	25,631,259
1961	1,919	1,726,293	58.03	25,106,079
1961	1,294,679	74.8	17,762,169	70.75

The bulk of the white area is located west of the Mississippi River, but the largest number of white area residents live east of the Mississippi. The specific figures are as follows:

	White Area West of Mississippi River		White Area Population East of Mississippi River	
Year	Sq. Miles	Per cent	Number	Per cent
1957	1,290,837	74.8	18,277,835	71.31
1961	1,294,679	74.9	17,762,169	70.75

	White Area East of Mississippi River		White Area Population West of Mississippi River	
Year	Sq. Miles	Per cent	Number	Per cent
1957	434,258	25.2	7,353,424	28.69
1961	431,614	25.1	7,343,910	29.25

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[29] Studies made after the closing of the Docket 6741 record show that the 1957 square miles should be 1,732,054 and the 1957 population 25,245,682. (R. 5177) The 1947, 1957 and 1961 statistics appear in the WGN Petition for Waiver filed November 13, 1962. (R. 515 ff.)

It is undisputed that the skywave service now received by the more than 25 million persons living in nighttime white areas is inadequate and that the public interest requires that improved AM service[30] be provided to these people and also to the additional millions presently receiving only one acceptable nighttime groundwave or primary service. It is also undisputed that at least four acceptable nighttime services *should* be provided to all white areas.[31]

Nonetheless, the Commission failed to afford needed radio service to these areas and so destroyed the Clear Channel concept that service cannot be extended to the critical areas.

Simply put, the Commission's 1961 Report and Order terminating the Docket 6741 proceeding violated Sections 307(b) and 303(f) of the Act by failing to carry out explicit Congressional mandates. Although Paragraph 1 of the September 14, 1961 Report and Order (R. 4085) states that the action taken was designed to "improve service" to white areas, the fact is that the action taken will not result in any significant improvement of service. For the record is clear that the *only* way in which nighttime AM service can be improved is by the enhancement and extension of skywave service. Because of the population distribution throughout the country and the physical behavior of radio signals, it is impossible to provide acceptable nighttime groundwave service to any significant portion of the white areas.[32] The record discloses that Clear Channel frequencies afford the only possible means of improving service to white areas[33] and that there are only two possible methods of improving nighttime skywave service to white areas: (1) use of power in excess of 50 kw by Class I-A stations and (2) creation of additional fulltime stations on Class I-A frequencies.

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[30] On October 10, 1947, the Commission denied a petition by CCBS requesting access to certain information in the Commission's possession relating to FM broadcast receivers. In making this ruling, the Commission stated: "The Commission is of the opinion that under the published issues in the clear channel hearing evidence concerning the area and population of the United States which may be expected to receive satisfactory broadcasting service from FM stations in the future would not be relevant. Accordingly, no useful purpose would be served in making available the data you request." P.N. 13207 (Oct. 10, 1947), see also 12 F.C.C. 587.

[31] See 1962 Docket 6741 Order, Pars. 16, 28. (R. 4929, 4932)

In the face of this uncontroverted and incontrovertible evidence, the Commission assumed that service to white areas can be improved significantly by the creation of new nighttime primary service by new fulltime stations operating on Class I-A frequencies.[34] This assumption flouts all of the evidence of record, which supports the erstwhile correct conclusion reached by the Commission on April 15, 1958 that "improvement of nighttime service throughout most of the existing white areas must be provided, *if at all,* by new or improved skywave service." (Emphasis added, Par. 41.)

Contrariwise, the elimination of 13 Class I-A frequencies cannot improve service to any significant portion of the white area populations. Indeed, the Commission admits that the duplication of 2 of the 13 Clear Channels will not result in improved service to any white areas.[35] On each of the remaining 11 duplicated Clear Channels, the Commission proposes to assign one new station to be located in specified western states. No specific locations are indicated for the new stations, but each must provide a first groundwave service to either 25 per cent of its service area or to 25 per cent of the population therein. The only engineering study as to the extent to which 11 such stations can be expected to improve service to white areas is one attached to the CCBS Petition for Rehearing filed October 16, 1961 (R. 4200 ff.), which showed the following estimates:[36]

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[32] See April 15, 1958 Further Notice, Par. 41.

[33] 1961 Report and Order, Par. 7. (R. 4088-89)

[34] E.g., Pars. 22, 34, 41, 44, 46, 54, 55, 61, 64, 81, 85a, 94, 97, 98 & 101.

[35] On 750 kc an existing station in Anchorage, Alaska (KFQD) will change from 730 kc to 750 kc. On 760 kc an existing station in San Diego, California (KFMB) will change from 540 kc to 760 kc.

Frequency (kc) & Location	White Area Served (Sq. Miles)	White Area Population Served
1. 670, Gooding, Idaho	4,121	21,026
2. 720, Hawthorne, Nevada	2,964	8,644
3. 780, Fallon, Nevada	2,482	7,554
4. 880, Holdredge, Nebr.	10,060	89,063
5. 890, Beaver, Utah	5,230	8,469
6. 1020, Lovington, N. M.	2,964	18,304
7. 1030, Lusk, Wyoming	3,832	9,775
8. 1100, Springfield, Colo.	2,169	4,064
9. 1120, Oakridge, Oregon	1,277	15,944
10. 1180, Hamilton, Montana	1.301	6,731
11. 1210, Pratt, Kansas	5,182	45,001
Totals	41,582	234,575

Thus, in terms of 1961 white area statistics, duplication of the 13 Class I-A frequencies can be expected to result in improved service to only 2.4 per cent of the white area[37] and but 0.9 per cent of the white area population.[38]

In summary, the Commission's orders cannot be squared with the record:

1. Over 25 million people living in almost 60 per cent of the land area of the United States do not now receive any acceptable nighttime primary signal and must depend upon the skywave service of Clear Channel stations for their *only* nighttime radio service.

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[36] The Chairman of the Commission testified that "at least 600,000" persons would receive their first nighttime primary service from the 11 new stations. (House Hearings on H.R. 8210, et al., Feb. 1963 (p. 235)).

[37] 41,582 of 1,726,293 square miles

[38] 234,575 of 25,106,039 people.

2. The nighttime skywave services now provided to these more than 25 million white area residents (and the additional millions who rely upon skywave service for their *only choice* of nighttime radio service) is obviously inadequate.

3. The only way in which nighttime service to these people can be improved is through the improvement of the skywave service now provided or the creation of additional skywave services.

4. The duplication of the 13 Class I-A Clear Channels, including those on which WJR and WGN operate:

a. Will degrade rather than improve existing nighttime skywave service;

b. Will not create any new nighttime skywave service;

c. Will not provide any new nighttime groundwave service to any of the 17.7 million white area residents living east of the Mississippi River;

d. Will not provide any new nighttime groundwave service to 7 million white area residents living west of the Mississippi River;

e. Will, at best, provide only *one* acceptable nighttime signal to approximately 234,575 to 600,000 of the more than 25 million white area residents.

A. Retention of Outdated 50 kw Power Ceiling

Equally without foundation is the FCC's retention of the outdated 50 kw power ceiling,[39] especially since it is based on the incomprehensible finding that still more studies are needed to determine whether higher power would be in the public interest.[40] While "the problems with which the Commission attempt[s] to deal [can]not be solved at once and for all time by rigid rules-of-thumb,'"[41] the Commission surely defaults its public interest responsibilities when it fails to solve a problem after 26 years of study and investigation, and in the face of its own findings and those of its staff, which establish the feasibility and desirability of higher power.

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[39] 1961 Order, Par. 20; 1962 Order, Par. 85 (R. 4094, 4946).

[40] 1962 Order, Par. 9 (R. 4926-27).

This failure is traceable initially to the Commission's announced intention to accord "due recognition" to the 25 year old Senate resolution respecting the use of power over 50 kw. In 1938, the Senate adopted S. Res. 294, 75th Cong., which characterized the use of power in excess of 50 kw as "definitely against the public interest" and expressed the sense of the Senate that the Commission "should not adopt * * * rules to permit * * * any station operating on a frequency in the standard broadcast band * * * to operate * * * with power in excess of fifty kilowatts." (Par. 19 of 1961 Order, R. 4093)[42]

The Commission's 1961 Order disposed of the higher power question as follows (Par. 20, R. 4094):

> Some parties have throughout the long history of this proceeding forcefully urged strenuous objection against the use of higher power, which, it is asserted, would give vastly undue competitive pre-eminence to the very few stations to whom in any case powers on the order of 500 kw to 750 kw would conceivably be authorized. The Commission, while aware of the strength of these contentions, cannot on the other hand ignore the potential for significant additions to service which the employment of higher power on even a few

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[41] *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 225 (1943).

[42] No committee hearings were held on S. Res. 294; one of the Senators on the floor at the time of passage by voice vote, commented, "We have had no time to consider; no one has even seen the resolution except, perhaps, the Senator from Montana" (83 Cong. Rec. 8944); S. Res. 294 did not amend the Communications Act, which gives the Commission authority to authorize power in excess of 50 kw; and S. Res. 294 did not constitute an expression of the policy of Congress, but merely expressed the personal views of the Senators who voted for its passage. See *The Diamond Rings*, 183 U.S. 176, 184 (1901).

> stations could make possible. Our close scrutiny of the portions of the record going to the issue of higher power fails to persuade us that, whatever the merits of the pending proposals for higher power, the objections listed against it have been sufficiently met. Upon careful consideration of the question, *we conclude that there is insufficient basis before us for a finding that the public interest would be served by authorizing higher power,* but that at the same time the question warrants further consideration in the light of such improvements and changes in service as may result from the action we now take to authorize additional unlimited time stations on 13 of the Class I-A clear channels. (Emphasis added.)

While Section 405 petitions for reconsideration of the 1961 Order were pending before the Commission, the House of Representatives, after Committee hearings, floor debate and a record vote, passed H.R. Res. 714 on July 2, 1962. H.R. Res. 714 reads as follows:

> *Resolved,* That it is the sense of the House of Representatives that the Federal Communications Commission—
>
> (1) may, notwithstanding Senate Resolution 294, Seventy-fifth Congress, third session, adopted June 7, 1938, authorize the use of power in excess of fifty kilowatts on any of the twenty-five Class I-A clear channel frequencies in the standard broadcast band (five hundred and forty to sixteen hundred kilocycles) which are specified in the rules of the Commission, if after consideration of all pertinent factors, including the objective of providing improved nighttime radio service to substantial areas and populations presently receiving inadequate nighttime radio service, the Commission finds that operation on such frequencies with power in excess of fifty kilowatts will serve the public interest, convenience, or necessity; and
>
> (2) should not authorize, for a period of one year from the date of adoption of this resolution, the construction for nighttime operation, or the nighttime operation, of any station on any of the twenty-five Class

> I-A clear channel frequencies in the standard broadcast band (five hundred and forty to sixteen hundred kilocycles) which are specified in the rules of the Commission, unless such station was or could have been authorized consistent with the rules of the Commission then in effect, to operate on such a frequency on July 1, 1961.

The Committee Report accompanying H.R. Res. 714, H.R. Rep. No. 1954, stated that the one year moratorium on duplication of Class I-A frequencies was suggested for the two-fold purpose of (1) giving the Commission an opportunity to reconsider its September 14, 1961, Report and Order in Docket 6741 in light of H.R. Res. 714 and (2) giving all Class I-A Clear Channel stations an opportunity to file applications for power in excess of 50 kw.[43]

In its Memorandum Opinion and Order released November 28, 1962, which affirmed its 1961 Report and Order, the Commission responded as follows to the statement of H.R. Res. 714 that S. Res. 294 was not a bar to higher power (R. 4926-27):

> 8. * * * We wish to make it clear that a majority of the Commission determined, on grounds wholly independent of the 1938 Senate Resolution, that higher power should not be permitted at this time.
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> 9. A majority of the Commission felt, and still feels, that *further studies are needed to determine whether such authorization of higher power would be in the public interest.* * * * (emphasis added)

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[43] The Report emphasized, (1) "* * * the Committee was greatly impressed with engineering testimony * * * that operations with power in excess of 50 kilowatts would greatly benefit large areas and populations which do not have available to them any adequate nighttime radio service" and (2) the Committee received testimony from a spokesman on behalf of the Department of Defense "who stated '* * * we favor increased power and clear channel operation to aid in survivable communications'."

> 10. The House Resolution, therefore, has no impact on the Commission's Report and Order of 1961 * * *.[44]

Above all, the Commission did not even attempt to weigh the undisputed advantages of higher power, improvement of service to white areas, against the so-called disadvantages. Instead, the Commission concluded that "further studies" are needed. The Commission did not explain why further studies are needed or what further studies it had in mind. It is difficult to conceive of any meaningful "further studies" that can be pursued in view of the fact that the Commission had before it detailed information compiled in the voluminous hearing records held on the question of higher power since 1936.[45]

Moreover, the competitive considerations supposedly weighing against higher power are illusory. First of all, the "undue competitive pre-eminence" charges hurled by the opponents of higher power are precisely that—charges, and nothing more. Nothing entitled to the dignity of being called a showing was even attempted, let alone made out in this connection.

Most decisively, however, the specific and unequivocal direction of Congress that adequate radio service be made available to the nation overrides any imaginary fears of undue competitive pre-eminence being accorded the Clear Channel stations. The Supreme Court has repeatedly reminded the FCC that it is not an antitrust enforcement agency and that its statutory touchstone is the public interest, convenience and necessity. E.g., *FCC v. RCA Com-*

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[44] The Commission also opined that its 1961 statement did not mean that the 1938 Senate Resolution reflected Congressional policy and explained that it "* * * was merely intended as a recitation of historical fact, and also as an indication that, if and when higher power is considered for any frequencies, whatever Congressional policy then exists on the matter will be accorded due recognition." (Par. 8, R. 4926)

[45] Included in the Docket 6741 record were details of the results flowing from the operation of WLW, Cincinnati, Ohio, with power of 500 kw from 1934 to 1939.

munications, Inc., 346 U.S. 86 (1953); *United States* v. *Radio Corp. of America,* 358 U.S. 334 (1959). Competitive considerations are simply not a controlling aspect of its public interest determinations, although "this is not to imply that federal antitrust policy may not be considered in determining whether the 'public interest, convenience and necessity' will be served by the proposed action of a broadcaster." 358 U.S. 334, 351 (1959). But it is surely anomalous to refer to undocumented charges of "competitive pre-eminence" in the context of this case when more than 25 million people are without adequate radio service.

As the Supreme Court put it in *FCC* v. *RCA Communications, Inc.,* 346 U.S. 86, 93 (1953):

> The very fact that Congress has seen fit to enter into the comprehensive regulation of communications embodied in the Federal Communications Act of 1934 contradicts the notion that national policy unqualifiedly favors competition in communications. The Act by its terms prohibits competition by those whose entry does not satisfy the "public interest" standard.

In short, there can be little doubt that the Commission is not to measure proposals for providing radio service by the standards of the antitrust laws. Congress directed "such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of radio service * * *." 47 U.S.C. § 307(b). In directing such equitable distribution it did not incorporate the general policies of the antitrust laws as the measure of the adequacy of the distribution of radio service. In so doing, it doubtless took into account the possibility that any provision for the equitable distribution of radio service might incidentally confer a competitive advantage on some stations—an eventuality of no great consequence in any event inasmuch as the FCC has adequate authority to promulgate safeguards. Against this background, no other conclusion is permissible but that the furtherance of competition is significant only as it aids in the attainment of the primary objective of the Act—"a fair, efficient, and equitable distribution of radio service."

It would be strange indeed if higher power that meets the requirements of the public interest as defined in the Act were rejected because of the possible existence of an incidental competitive advantage. It would be equally strange to conclude that 25 million people may be written off so far as adequate radio service is concerned by reference to dubious and undocumented competitive considerations.

Yet that is precisely what the FCC has done here. It has relied almost entirely on charges of "undue competitive pre-eminence," having failed to base its conclusions on the public interest considerations peculiarly within its own special competence.

B. National Defense Considerations

Nor are the above the only defects in the FCC's order. It also erroneously concluded that national defense preparedness is not impaired by the duplication of 13 Class I-A frequencies and retention of the 50 kw power ceiling.[46] Here again, the fact is that over 25 million people do not receive any satisfactory nighttime groundwave service and must rely on admittedly inadequate skywave service for their only nighttime broadcast service. From a national defense standpoint, it would seem to be of crucial importance to preserve and improve this service.

With respect to civilian defense needs, it is obvious that all possible steps should be taken to enable radio to serve as an instantaneous means for conveying information to *all* of the people during a state of emergency. With respect to military defense needs, the United States Air

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[46] 1962 Order, Par. 14 and 1961 Order, Par. 47, Footnote 6 (R. 4928, 4104).

Force has been conducting experiments with standard broadcast stations looking toward the establishment of an emergency back-up communications system known as BRECOM. The system involves the operation of 60 word per minute teletype circuits using the carriers of broadcast stations selected on the basis of their ability to guarantee reliable communications.[47]

The 1961 Order did not even discuss the national defense aspects of higher power except for a footnote reference that "We recognize the importance of clear channel service to national defense communications and in emergencies * * *." (R. 4104)

In the CCBS Petition for Rehearing, it was alleged that the duplication of 13 Class I-A frequencies would have a serious adverse impact on the usefulness of these frequencies for national defense and military emergency communications because the duplications would (1) curtail rather than improve the skywave service provided by the Class I-A stations assigned to these frequencies and (2) foreclose any future possibility of improving the skywave service of the Class I-A stations by the use of higher power. As noted above, the House Report accompanying H. R. Res. 714 emphasized the testimony of a spokesman for the Department of Defense that "* * * we favor increased power and clear channel operation to aid in survivable communications."

The Commission summarily disposed of these contentions in its 1962 Order by declaring its "* * * informed judgment that national defense preparedness is not impaired by the clear channel decision now outstanding."

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[47] The system permits the carrying of teletype information at the same time that the station carries its normal program information. The degree of reliability of the teletype information depends upon the signal strength of the station concerned and the degree of interference caused by other broadcast signals, atmospheric noise, man-made noise, etc.

(Par. 14, R. 4928) All of the reasons[48] cited by the Commission in support of its "informed judgment" ignore the following record facts: (1) none of the reasons refute the need to improve service through the use of higher power for civilian defense needs, (2) the BRECOM system's usefulness would be in direct proportion to the degree to which the stations employed could provide reliable signals throughout the United States, (3) the only way in which reliable signals can be provided to all the nation is through the use of higher power and clear channels, and (4) the 13 duplications will in fact cause interference to the skywave service now provided by the Class I-A stations involved.[49]

What the Commission has done, in sum, is to hide behind uncritical generalities and such looseness of expression as to make it impossible to determine what really lay behind its conclusions. In administrative jurisprudence, general, conclusory statements are clearly not sufficient to constitute the findings such as are contemplated by the statute. See, e.g., *FCC* v. *RCA Communications, Inc.*, 346 U.S. 86 (1953). Moreover, the right to present evidence is a barren one if the agency fails to consider it. Yet here, it is impossible to tell from the record whether the Commission weighed the evidence and cast it aside or invoked criteria that rendered such consideration legally immaterial. In such circumstances, the FCC's orders are less rational decision making than fiat.

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[48] The cited reasons were (Pars. 13-14): (1) the 13 duplications would not cause interference within the Class I-A stations' normal secondary service area, (2) the BRECOM system, which is still in the experimental and developmental stage, would not depend entirely on Clear Channels, (3) the information proposed to be superimposed on normal program transmissions is less susceptible to interference and (4) the proposed new 11 fulltime stations may well prove to be of some value with respect to BRECOM.

[49] It is further noted that the fact that the BRECOM system will not depend entirely on Clear Channel stations does not controvert the fact that these stations are required for any successful BRECOM system. Also the Commission failed to indicate how the proposed new 11 fulltime stations "may" prove to be of value with respect to BRECOM and failed to explain the basis for its statement that the teletype information "is less susceptible to interference."

C. Duplication of 720 kc

The only reasons given by the Commission in support of its conclusion that the Chicago Clear Channel frequencies, including 720 kc on which WGN operates, are not needed, or are as well suited as some other Clear Channel frequencies for providing skywave service to white areas should higher power be authorized, are the following:[50] (1) protection requirements to foreign and domestic adjacent channel assignments would limit higher power radiations of Chicago Class I-A stations to the east and to the south, and (2) the potential of the Chicago Clears for improving service to the west is not as great as that of Clear Channel stations located in Los Angeles (460 kc); Dallas and Fort Worth (820 kc); Minneapolis (830 kc); Des Moines (1040 kc); Salt Lake City (1160 kc); and San Antonio (1200 kc).

These "reasons" are not supported by any record findings and do not rationally support the conclusion reached. They do not controvert the record fact that WGN and the other Chicago Clear Channel stations are so located as to be able to provide improved service to substantial white area populations if authorized to operate at higher power. The real question posed, which is not discussed by the Commission, is whether improved service to white areas can be best provided by (1) duplicating the Chicago Clears and retaining the 50 kw power ceiling or by (2) keeping the Chicago Clears free of duplication and authorizing higher power. The record is clear that service would be improved to substantially greater white areas if WGN were authorized to operate with higher power than if 720 kc is duplicated as contemplated by the Docket 6741 decision. The new Class II station would not provide any new skywave service to white areas and would provide the first nighttime primary service to only 8,600 people. (R. 4401 ff.) On the other hand, WGN, operating with 750 kw, would improve its existing skywave service to substantial white areas

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[50] 1962 Order, Par. 30; 1961 Order, Par. 37 (R. 4933, 4099).

(compare Figure 45 of Exhibits 341 and Exhibit 3 of CCBS Comments filed August 15, 1958)[51] and would provide a first nighttime primary service to over 70,000 people. (R. 4401 ff.)

D. Duplication of 760 kc

The only reasons given by the Commission in support of its conclusion that 760 kc, the frequency assigned to WJR, is the optimum frequency in the standard broadcast band to solve the problem of finding a new frequency for KFMB, San Diego, California,[52] are: (1) a study of all frequencies below 760 kc shows the only other frequency available is 550 kc, which is not as desirable as 760 kc because if KFMB operated on 550 kc its coverage would be less than its present 540 kc coverage, and (2) 760 kc is the only I-A frequency available to assign to KFMB.

With respect to 550 kc, the Commission failed to weigh the relative public interest advantages of duplicating 760 kc in San Diego as against shifting KFMB to 550 kc. The Commission ignored completely the fact that if WJR were authorized to operate with higher power it would improve service to white areas whereas any coverage lost by KFMB by moving to 550 kc would be in areas receiving numerous other acceptable primary services. See Appendix F to this Brief.[53]

The Commission also failed to weigh the relative advantages and disadvantages of assigning KFMB to some frequency above 760 kc other than a Class I-A frequency. For example, the engineering study submitted by WJR showed that KFMB could be assigned to 1000 kc. (R. 4357-80)

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[51] See Appendix E to this Brief.

[52] 1962 Order, Pars. 38-41; 1961 Order, Par. 78 (R. 4934-35, 4114-15). KFMB, San Diego, California, must move from 540 kc to some other frequency because of an international agreement with Mexico.

[53] The Commission also ignored the fact that its records show that in 1954 KFMB voluntarily changed its frequency from 550 to 540 kc (BL-5386 granted December 7, 1954) at a time when Mexican claims to the use of 540 kc as a Mexican Class I-A Clear Channel were a matter of public record. Mexican Change List No. 95 (March 16, 1948).

The statement that 760 kc is the only I-A frequency available to solve the KFMB problem because WNYC, New York City, presently operates some nighttime hours on 830 kc is an obvious non sequitur. CCBS, with the support of its members WGN and WJR, has urged throughout its history that the Commission should not duplicate any of the too few remaining Class I-A frequencies unless and until higher power has first been authorized. However, if the Commission feels that the public interest requires duplicating some Class I-A frequency to solve the KFMB problem, it should do so in a specific proceeding instituted for that purpose rather than attempt to do so illegally in a proceeding initiated for the purpose of finding ways and means to bring improved service to white areas.[54]

E. Alleged Retained Potential to Improve Service to White Areas

Finally, the only reason given in support of the conclusion that freedom of action respecting a sufficient number of Clear Channels has been retained to enable the claimed benefits of higher power to be realized[55] is the assertion that authorization of higher power with respect to 12 Class I-A channels on which the status quo is maintained "can bring a total of four skywave signals to practically the entire United States." There is no record evidence whatsoever to support this assertion. Even if all of the Class I-A stations operating on the so-called reserved 12 Class I-A frequencies were to avail themselves of any opportunity given in the future to operate with higher power,[56] which is not established by the record, there is no evidence to show that the goal of providing at least four acceptable nighttime signals to all white area populations would be realized. To the contrary, the only evidence of record shows that this goal can be realized only by authorizing a minimum of 20 Class I-A stations to operate with higher power. It is, therefore, irrational to duplicate 13 of the 25 Class I-A Clear Channels and thus bar any future operation with higher power by these stations until a definite allocation has been made that will in fact provide four acceptable nighttime services to all white area populations.

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[54] If a Class I-A Channel is to be duplicated to solve the KFMB situation, the instant record contains no support for choosing 760 kc in preference to 830 kc. The only reason assigned by the Commission for selecting 760 in lieu of 830 kc is the insubstantial one that assigning KFMB to 830 kc would violate its policy of assigning no more than one station to a Class I-A frequency in addition to the dominant Class I-A station, since WNYC operates *some* nighttime hours on 830 kc. This clearly falls far short of the required weighing of the relative advantages and disadvantages of using 760 kc as compared to 830 kc.

[55] 1962 Order, Pars. 16, 28 and 85 (R. 4929, 4932, 4946).

II. THE COMMISSION'S DOCKET 6741 ORDERS AUTHORIZING ADDITIONAL FULLTIME STATIONS TO OPERATE ON THE CLASS I-A FREQUENCIES ASSIGNED TO WGN AND WJR VIOLATED SECTIONS 303(f), 309(e) AND 316 OF THE COMMUNICATIONS ACT.

As existing and long-time licensees of the Commission, WJR and WGN not only are bound by the Commission's outstanding rules and regulations, but also are entitled to their protection.

By virtue of the classification of 760 kc and 720 kc as Class I-A frequencies in the rules in existence prior to the 1961 Order in Docket 6741 (Sections 3.25 and 3.128 (v)), the entire nighttime secondary service areas of WGN and WJR were protected against *any* interference from cochannel stations. The 1961 Order changed the Commission's rules to authorize an additional fulltime station on 760 kc and 720 kc. There can be no doubt that the foregoing change in the Commission's allocation rules for standard broadcast stations constitutes "in fact and in substance" a modification of WJR and WGN's licenses. *FCC* v. *National Broadcasting Co.*, (*KOA*), 319 U.S. 239, 245 (1943).[57]

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[56] One of the so-called unduplicated 12 Class I-A frequencies is in fact duplicated in the continental United States (770 kc). Another is duplicated in Alaska (660 kc) and thus is not distinguishable from 750 kc. Two others are partially duplicated (640 kc & 830 kc).

The rights of WJR and WGN to adjudicatory hearings before the modifications of their licenses are in no way affected by the fact that a general proceeding has been held on the *overall policy questions* of whether changes in the rules respecting Class I-A frequencies should be made in order to provide improved service to white areas. Such a proceeding provides no substitute for weighing, in an adjudicatory context, the actual evidence bearing on the ultimate public interest questions involved in the authorization of new nighttime stations on frequencies not hitherto subject to co-channel interference during nighttime hours.

This is particularly true here in view of the protracted past history of the Docket 6741 proceeding. The "evidentiary" phases of the proceeding were concluded in October of 1947. The engineering and other evidence submitted to the Commission in the hearings held during 1946 and 1947 was addressed to the general policy question of how best to improve service to white areas—whether through authorizing Class I-A stations to operate with higher power or by duplicating Class I-A frequencies or by a combination of the two approaches. At the time of the evidentiary presentation in 1946 and 1947, the Commission's later proposals to authorize new stations on 760 and 720 kc had not yet been formulated. Obviously, WJR and WGN did not have notification in writing of such proposed modifications of their licenses at the time. Indeed, WJR and WGN did not receive any such specific notification until (1) the release of the Further Notice of Proposed Rule Making in this proceeding in April, 1958 with respect to WGN and (2) the release of the Report and Order in September, 1961 with respect to WJR.[58]

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[57] The Supreme Court held that the rules prohibiting nighttime operation on Class I-A channels

> were incorporated into the terms of KOA's license. * * * To alter the rules so as to deprive KOA of what had been assigned to it, and to grant an application which would create interference on the channel given it, was in fact and in substance to modify KOA's license. This being so, Section [316] required that it be made a party to the proceeding. We can accord no other meaning to the language of the proviso which requires that the holder of the license which is to be modified must have notice in writing of the proposed action and the grounds therefor and must be given a reasonable opportunity to show cause why an order of modification should not issue. 319 U.S. at 245-6.

The written submissions filed in this proceeding in response to the 1958 Further Notice and the 1959 Third Notice fell far short of the adjudicatory hearing required by the Communications Act before modification of the licenses of existing broadcast stations. Such modifications may be made final only where the licensee has had an opportunity with respect to a specific modification proposal to present evidence, to cross-examine parties advocating the modification, and to present oral argument on the questions of fact and law involved.

The rights of WJR and WGN to adjudicatory hearings prior to modification of their licenses were not affected, inasmuch as (1) each filed license renewal applications in 1961, prior to the release of the 1961 Order, which requested renewals under the then existing rules that prohibited any duplication of 760 kc or 720 kc, and (2) WJR's application was granted prior to the October 30, 1961 Order (the effective date of the rule changes set forth in the 1961 Order) subject to a condition[59] and WGN's was granted after October 30, 1961.

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[58] The Third Notice released in September, 1959, proposed to duplicate WJR, but *not* for the purpose of solving the KFMB, San Diego, problem.

[59] The condition was that "* * * operation under this renewal is subject to whatever interference may be caused to Station WJR, outside of its 0.5 mv/m 50 per cent skywave contour, by a co-channel unlimited time Class II station assigned to San Diego, California, pursuant to Report and Order in Docket 6741 adopted September 13, 1961 (Clear Channel case)." (R. 5033)

Both Section 307(d) of the Communications Act and Section 9 of the Administrative Procedure Act provide that a license for an activity of a continuing nature, upon timely application for renewal, remains in full force and effect pending action on the renewal application. The Communications Act is equally explicit that a renewal application may not be denied, in whole or in part, without a "full hearing" pursuant to the provisions of Section 309. The condition attached to the WJR renewal and the license granted WGN purport to modify the licenses concerned by incorporating the modified rules authorizing duplication. Thus, in both cases an attempt was made to deny the applications without the requisite adjudicatory hearings that had been demanded by WJR and WGN in their petitions for reconsideration directed against the 1961 Order.

The hearing required before a renewal application can be denied has been equated to the hearing required under Section 316 of the Communications Act by the Supreme Court, as follows:

> The Commission for specified reasons may revoke any station license pursuant to the procedure prescribed in Section 312(a) * * * It may also modify a station license if in its judgment such action will promote the public interest, convenience, and necessity or the provisions of this chapter * * * will be more fully complied with. Section 312(b). And licenses for broadcasting stations are limited to three years, the renewal being subject to the same considerations and practice which affect the granting of original applications. Section 307(d) * * * *But in all those instances the licensee is given an opportunity to be heard before final action can be taken. Ashbacker Radio Corp.* v. *FCC,* 326 U.S. 327, 332 (1945) (emphasis added).

Indeed, the Commission has recognized in analogous situations that the mere fact that a station's application for renewal of license comes due at or about the time the Commission is considering modifying that authorization in no way diminishes the licensee's right to show cause at a hearing why the modification should not be made effective. Fo rexample, in the proceedings leading to the appeal in *Peoples Broadcasting Co.* v. *FCC,* 93 App. D.C. 78, 209 F. 2d 286 (1953), the Commission, after rule making, determined to substitute Channel 8 for Channel 4 at Lancaster, Pennsylvania, and issued an appropriate order to WGAL, Inc., the licensee of Channel 4, pursuant to Section 316 of the Act, to show cause why its frequency should not be modified in accordance with the rule making decision. Only a few days after issuance of the show cause order, WGAL, Inc., filed a timely application for renewal of its license. The Commission thereupon renewed the license of the station for Channel 4, subject to the show cause proceedings. In its later decision affirming the Commission's action, the Court noted this procedure with apparent approval. *Peoples Broadcasting Co.* v. *FCC, id.* at 80, 209 F. 2d at 287.

That the evidentiary hearing to which a licensee is entitled before modification of an outstanding license for broadcast activity of a continuing nature may not be denied merely because an application for renewal becomes due is also apparent from a consideration of the incongruous results that would follow if the converse were true. Since the Commission may grant licenses of shorter duration than the maximum three years permitted for broadcast stations by the Communications Act, Section 307(d), it could easily deprive existing licensees of any adjudicatory hearing at all prior to modification of their licenses merely by issuing licenses for brief periods. The way would thus be open for the Commission substantially to "nullify rights which the Act confers, though it preserves them in form." *American Broadcasting Co.* v. *FCC,* 89 App. D.C. 298, 306, 191 F. 2d 492, 501 (1951). Plainly, Congress could not have intended that the specific and express hearing rights conferred on existing licensees by Sections 309 and 316 of the Act could be so easily defeated.

Also of significance is the fact that it has been repeatedly stressed on judicial review of Commission decisions that a broadcasting license, in view of the substantial investment involved, "confers a private right, although a limited and defeasible one," which may not be abridged or taken away without traditional procedural due process. *L. B. Wilson, Inc.* v. *FCC,* 83 App. D.C. 176, 181, 170 F. 2d 793, 798 (1948).[60]

The foregoing view of an existing licensee's rights under the Communications Act is not at variance with this Court's recent decision in the Bakersfield, California, deintermixture proceedings. *Transcontinent Television Corp.* v. *FCC,* App. D.C. , 308 F. 2d 339 (1962).

There, this Court held that an existing television licensee was entitled to a hearing before the Commission could order deletion of the television channel upon which the licensee was operating and that the type of hearing required depended upon whether the deletion was to be effective at the end of the license term or before. In either event, the existing licensee is entitled to be given notice and opportunity to be heard. Accordingly, the Court approved the procedure used in that case since the licensee was given specific notice in a rule making type of procedure that the Commission proposed to delete the channel and the licensee was given an opportunity to file written comments, documents, data and reply comments as well as alternative proposals to the specific one set forth by the Commission and the deletion was not made effective until the end of the license term.

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[60] In the lower court's opinion in the KOA case, *National Broadcasting Co.* v. *FCC,* 76 App. D.C. 238, 243, 132 F. 2d 545, 556 (1942), affirmed, *FCC* v. *National Broadcasting Co., (KOA),* 319 U.S. 239 (1943), Justice Rutledge emphasized that "procedural due process protects [licensees] against [arbitrary administrative action], and does so *nothwithstanding the broad rule-making power and discretion given the Commission concerning the manner of conducting its business.*" (emphasis added.)

Such was not the case here. The instant proceeding was a general, industry-wide investigation affecting numerous existing licensees. WJR was never given notice or opportunity to present comments, documents, data, reply comments or alternative proposals to any specific proposal to assign KFMB, San Diego, California, to WJR's assigned frequency nor was WGN given any such notice and opportunity to be heard on any specific proposal to assign a second fulltime station to operate on WGN's assigned frequency. Thus, the Commission denied to WGN and WJR the minimal hearing that was given to the licensee in the *Transcontinent* case.

Moreover, the facts in the instant case are dissimilar from *Transcontinent* with respect to the renewal applications.

In that case, the existing licensee contended that by ordering deletion of the television channel, effective at the expiration of its license, the Commission had modified the license by denying a right to apply for a renewal and to have a hearing thereon.

The Court stated that the existing licensee, if it filed an application for renewal for the already deleted channel, would be applying for a channel no longer available and, therefore, no Section 309 (e) right to any evidentiary hearing could be invoked, citing *Bendix Aviation Corp.* v. *FCC*, 106 App. D.C. 304, 308, 272 F. 2d 533, 537 (1959), where the Court held that an application for a frequency "no longer available for any such purpose as was disclosed by the * * * application" could be dismissed without a hearing.

Here, however, when WJR and WGN filed their applications for renewal to operate on clear channel frequencies (WJR in June 1961 and WGN in September 1961), the frequencies *were* available for the very purposes set forth in the applications and the Commission's order making them unavailable came *after* such renewal applications had been duly filed. These renewal applications were filed under the rights set forth in Section 9(b) of the Administrative Procedure Act and 307(d) of the Communications Act. Upon the timely filing of such renewal applications, the then existing licenses continued in effect by the explicit terms of these statutory provisions. Section 307(d) states:

> Pending any hearing and final decision on such an application [renewal] and the disposition of any petition for rehearing pursuant to section 405, *the Commission shall continue such license in effect.*

In short, while the licenses of WJR and WGN were in effect, the Commission unlawfully modified them without a hearing and, more particularly, without an evidentiary hearing of the type required by Section 316.

III. THE COMMISSION'S REFUSAL TO ACCEPT FOR FILING THE WJR AND WGN APPLICATIONS FOR POWER OF 750 KW VIOLATED SECTION 309(e) OF THE COMMUNICATIONS ACT BY DENYING THE APPLICATIONS WITHOUT A HEARING.

The Supreme Court's decision in *United States* v. *Storer Broadcasting Co.,* 351 U.S. 192 (1956), makes it clear that the Commission can deny or return an application not in compliance with its rules without a hearing *only* if the applicant fails to allege reasons, sufficient if true, to justify a waiver of the pertinent rules.[61]

WGN and WJR each accompanied their applications for 750 kw, which were filed in the fall of 1962, with petitions to waive certain rules, including the rule limiting power to 50 kw, and to accept the applications for filing. The following facts were alleged as reasons justifying a waiver of the rule limiting power to 50 kw (R. 5044-67, 5151-77, 5180-83):

---

[61] Moreover, Section 1.15 of the Commission's Rules provides that:

> Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

1. On May 10, 1962, the Commission placed a freeze on the processing of standard broadcast applications because no significant cure had been effectuated concerning the existence of substantial white areas.[62]

2. Recognition of the white area problem had led the Commission to institute general hearings in 1936 (Docket 4063), 1938 (Docket 5072-A) and in February of 1945 (Docket 6741).

3. The Commission had concluded in the Docket 6741 proceeding that "improvement of nighttime service throughout most of the existing white areas must be provided, if at all, by new or improved skywave service." (Further Notice of Proposed Rule Making released April 15, 1958 in Docket 6741, paragraph 41).

4. The Commission's Report and Order released September 14, 1961 in Docket 6741 would result in improved service to only a handful of the over 25 million residents of white areas.

5. The House of Representatives, on July 2, 1962, passed H. R. Res. 714 which expressed the sense of the House of Representatives that the Commission should not implement its 1961 decision for a period of a year in order for it to reconsider the decision and to give all Class I-A Clear Channel stations an opportunity to file applications for power in excess of 50 kw.

6. The committee report accompanying H. R. Res. 714, H. R. Rep. 1954, stressed that the committee was greatly impressed with testimony that (1) operation with power in excess of 50 kw "would greatly benefit large areas and populations which do not have available to them any adequate nighttime radio service" and (2) the Department of

---

[62] See Report and Order released May 10, 1962 amending Rule 1.354, 23 RR 1545. The Commission emphasized that the areas which lacked primary service in 1946 "* * * have been reduced only a minute degree by the continual flow of new assignments." (*Ibid.*)

Defense favored "increased power and clear channel operation to aid in survivable communications."

7. Operation of WJR and WGN with powers of 750 kw would result in substantial improvement in service to significant portions of the white areas;[63] would be consistent with the Department of Defense position favoring increased power; would aid civil defense and disaster operations; and would provide a means of better understanding between the United States and its Latin American neighbors.

In denying the WJR and WGN petitions for waiver and dismissing their 750 kw applications, the Commission made no attempt to set forth rational reasons demonstrating that WJR and WGN had failed to allege reasons, sufficient if true, to justify a waiver of the rule limiting power to 50 kw. Instead, it merely stated that " * * * we do not think a showing has been made of sufficient force to override the requirements of orderly procedure."[64]

The Commission explained the meaning of "orderly procedure" as follows (Par. 4 of Memorandum Opinion and Order released November 27, 1962, R. 5072):

> In our opinion, orderly procedure would seem to require that the merits of authorizing use of power in excess of 50 kw be evaluated in a rule-making procedure previous to firm commitment to that course of action, and that the rules be amended to spell out the conditions under which such operation may be authorized in the public interest if it is deemed that such a course will serve this interest.

The Commission further "* * * suggested that the advocates of higher power, including prospective licensees, may more appropriately present their case by a petition for rule making in the matter rather than by attempting to obtain consideration of individual applications inconsistent with present rules.''[65]

---

[63] See Appendices E and F to this Brief.

[64] Memorandum Opinion and Order released November 27, 1962, Par. 6 (R. 5073).

The "reasons" assigned by the Commission for denying the petitions for waiver fall far short of establishing that the allegations of WJR and WGN were not sufficient, if true, to justify a waiver of the rules. Accordingly, the Commission illegally denied the WJR and WGN applications for 750 kw without a hearing as required by Section 309(e) of the Communications Act as interpreted by the Supreme Court in *United States* v. *Storer Broadcasting Co.,* 351 U.S. 192 (1956).

Where, as here, applications are accompanied by a request for waiver that is supported by reasons that are neither frivolous nor unlawful on their face, the Commission is bound to observe the requirements of Sections 309(a) and 309(e). *Storer, supra; City of New York Mun. Broadcasting System* v. *FCC,* 96 App. D.C. 172, 223 F. 2d 637 (1955).

There is another reason for the impropriety of the Commission's action. Under the Communications Act of 1934, modifications of currently effective licenses of existing stations are brought about by one of two means. Either the Commission or the licensee may take the initiative and the governing Sections of the Act differ depending upon whether the Commission or the licensee commences the action looking toward modification.

If the Commission on its own motion desires to modify the current license of an existing station and the licensee objects, the procedures of Section 303(f) or 316 are invoked and a hearing is given to the Commission. The Commission, with the burden of proof, is given full opportunity to show that the modifications should be made in the public interest.

---

[65] *Ibid.,* Par. 5 (R. 5073).

The same statutory pattern holds where the licensee takes the initiative. If an existing station wishes to modify its license, the procedures of Section 308 and 309 are invoked and, for the reasons heretofore stated, if the Commission objects for any reason to the proposed modification, it must give the licensee a hearing at which the licensee, with the burden of proof, is given full opportunity to show that the modifications should be made in the public interest.

Under the KOA doctrine it is clear that the part of the Commission's rules which specify the power of WJR and WGN is an integral part of the licenses of WJR and WGN. Just as the Commission could not, without a hearing, reduce the power during the term of the license to an amount below 50 kw, neither could the Commission, without a hearing, reject an application to increase such power during the term of the license.

The petitions of WGN and WJR for waiver of the rules to remove the 50 kw power limitation from the licenses of WGN and WJR were applications for modification of license within the intendment of Section 308(a) of the Act to which the Section 309 procedures apply.

Therefore, the Commission should have accorded a full hearing on the petitions for waiver as applications for modification of license of WGN and WJR before denying them and this is so whether the petitions be considered as part of or separate from the accompanying applications that were returned to the applicants also without hearing.

IV. CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should:

a. Reverse the Commission's Report and Order released September 14, 1961 in Docket 6741, as affirmed in its Memorandum Opinion and Order released November 28, 1962, and direct the Commission, following reconsideration based on the record evidence, to issue a Modified Report and Order amending the Commission's Rules and Regulations in a manner designed to provide at least four reliable broadcast signals to all areas of the United States now without a satisfactory nighttime primary service.

b. Reverse the Commission's Memorandum Opinion and Order released November 27, 1962, denying the WJR and WGN Petitions for Waiver and returning their 750 kw applications, and direct the Commission, upon resubmission of the 750 kw applications, to accept the WJR and WGN applications for filing and to either grant them or designate them for hearing.

Respectfully submitted,

THE GOODWILL STATIONS, INC.
Fisher Building
Detroit 2, Michigan

WGN, INC.
2501 West Bradley Place
Chicago 18, Illinois

By

REED T. ROLLO

KELLEY E. GRIFFITH

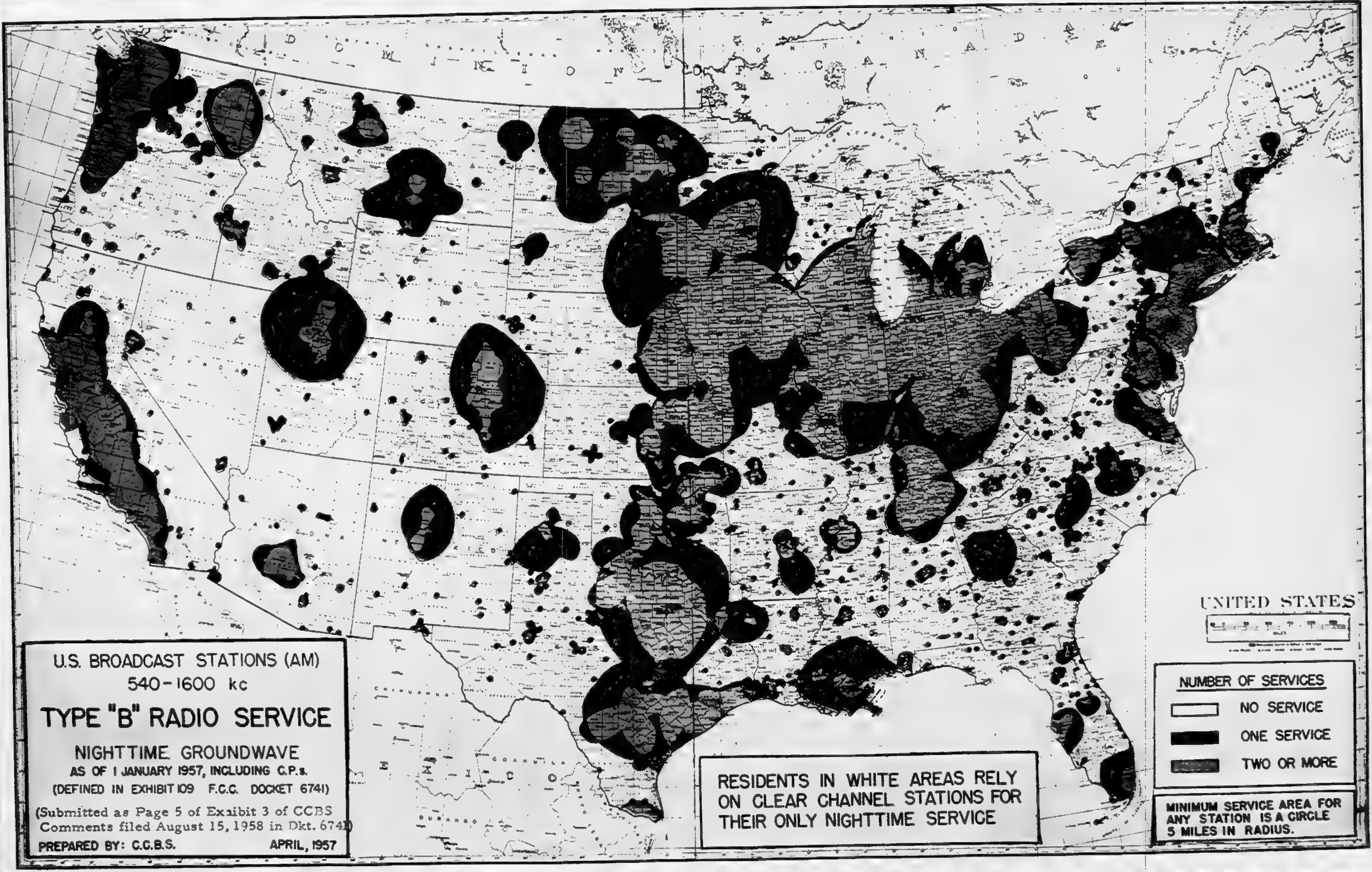
R. RUSSELL EAGAN

of

KIRKLAND, ELLIS, HODSON,
CHAFFETZ & MASTERS
800 World Center Building
Washington 6, D. C.

Their Attorneys

April 1, 1963



DOMINION OF CANADA
UNITED STATES
MEXICO
NUMBER OF SERVICES
☐ NO SERVICE
■ ONE SERVICE
▨ TWO OR MORE

U.S. BROADCAST STATIONS (AM)
540-1600 kc

TYPE "B" RADIO SERVICE

NIGHTTIME GROUNDWAVE
AS OF 1 JANUARY 1957, INCLUDING C.P.s.
(DEFINED IN EXHIBIT 109 F.C.C. DOCKET 6741)

(Submitted as Page 5 of Exhibit 3 of CCBS Comments filed August 15, 1958 in Dkt. 6741)

PREPARED BY: C.C.B.S. APRIL, 1957

RESIDENTS IN WHITE AREAS RELY ON CLEAR CHANNEL STATIONS FOR THEIR ONLY NIGHTTIME SERVICE

MINIMUM SERVICE AREA FOR ANY STATION IS A CIRCLE 5 MILES IN RADIUS.

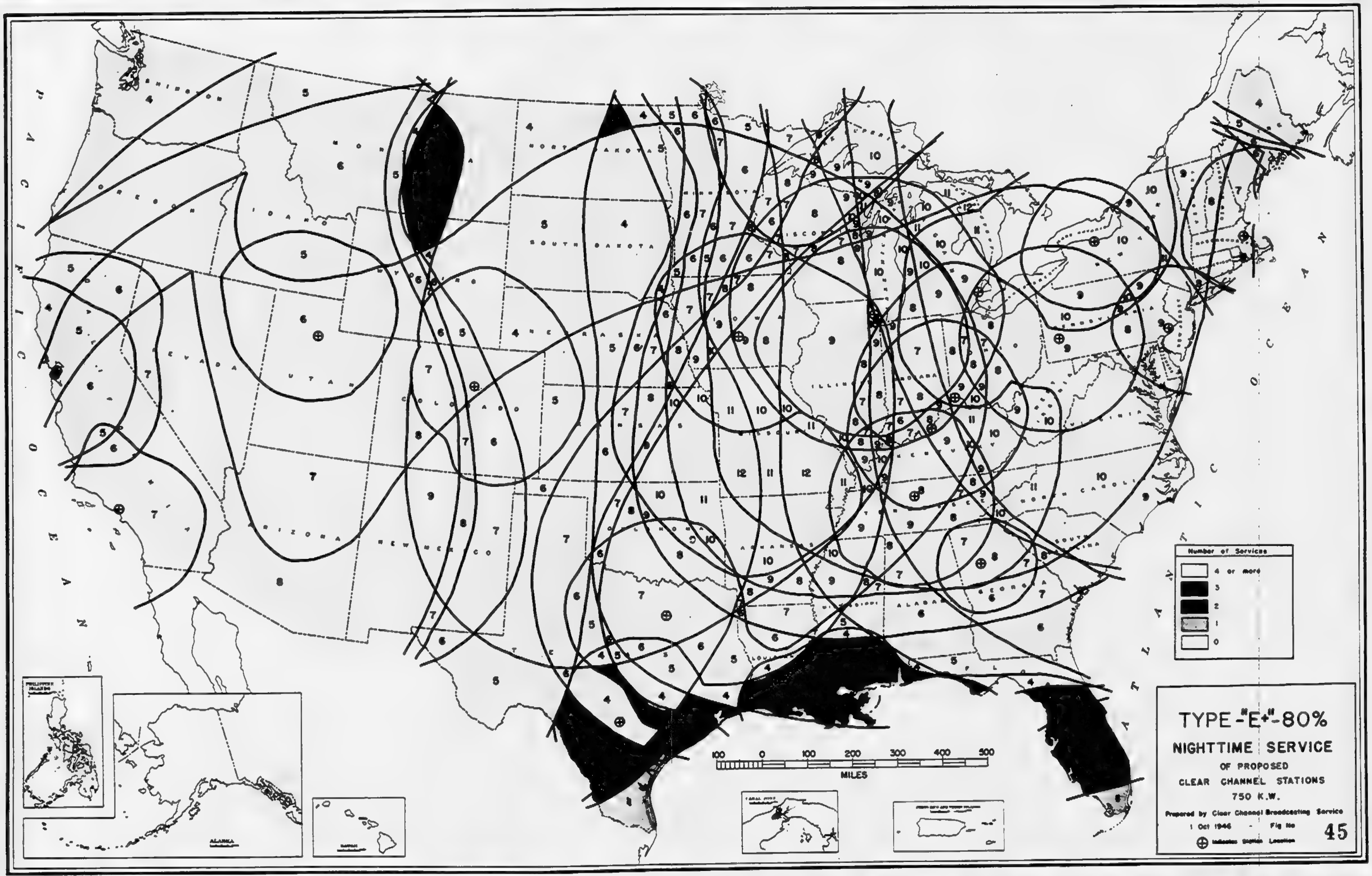
APPENDIX B

The 25 Class I-A Clear Channel frequencies, and the dominant stations assigned to each, are as follows:[1]

Frequency (kc)	Call Letters and Location
* 1. 640	KFI, Los Angeles, Calif.
* 2. 650	WSM, Nashville, Tenn.
** 3. 660	WNBC, New York City
** 4. 670	WMAQ, Chicago, Ill.
* 5. 700	WLW, Cincinnati, Ohio
* 6. 720	WGN, Chicago, Ill.
* 7. 750	WSB, Atlanta, Ga.
* 8. 760	WJR, Detroit, Mich.
** 9. 770	WABC, New York City
**10. 780	WBBM, Chicago, Ill.
*11. 820	WFAA, Dallas and WBAP, Ft. Worth, Texas
12. 830	WCCO, Minneapolis, Minn.
*13. 840	WHAS, Louisville, Ky.
14. 870	WWL, New Orleans, La.
**15. 880	WCBS, New York, City
**16. 890	WLS, Chicago, Ill.
***17. 1020	KDKA, Pittsburgh, Pa.
***18. 1030	WBZ, Boston, Mass.
*19. 1040	WHO, Des Moines, Iowa
***20. 1100	KYW, Cleveland, Ohio
**21. 1120	KMOX, St. Louis, Mo.
*22. 1160	KSL, Salt Lake City, Utah
*23. 1180	WHAM, Rochester, N. Y.
*24. 1200	WOAI, San Antonio, Texas
**25. 1210	WCAU, Philadelphia, Pa.

---

[1] The single asterisk denotes a member of CCBS; the double asterisk indicates a network owned station; and the triple asterisk denotes a Westinghouse owned station.


Number of Services
4 or more
3
2
1
0
PACIFIC OCEAN
ATLANTIC OCEAN
100 0 100 200 300 400 500
MILES
WASHINGTON
OREGON
CALIFORNIA
NEVADA
IDAHO
MONTANA
UTAH
WYOMING
COLORADO
ARIZONA
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
IOWA
MISSOURI
ARKANSAS
LOUISIANA
WISCONSIN
ILLINOIS
INDIANA
MICHIGAN
OHIO
KENTUCKY
TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
SOUTH CAROLINA
NORTH CAROLINA
VIRGINIA
PENNSYLVANIA
NEW YORK
PHILIPPINE ISLANDS
ALASKA
HAWAII

TYPE-"E+"-80%

NIGHTTIME SERVICE

OF PROPOSED

CLEAR CHANNEL STATIONS

750 K.W.

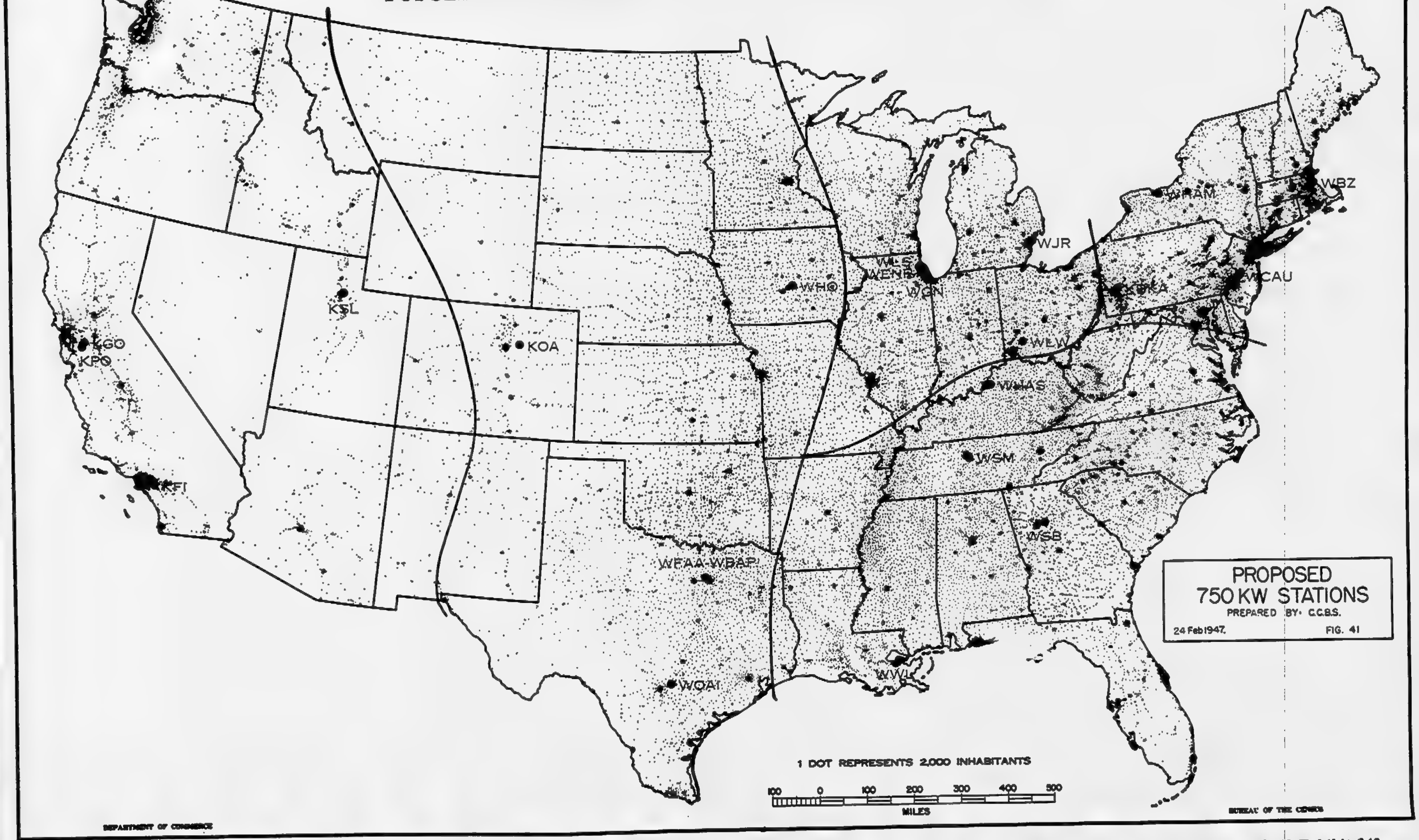
Prepared by Clear Channel Broadcasting Service

1 Oct 1946 - Fig No 45

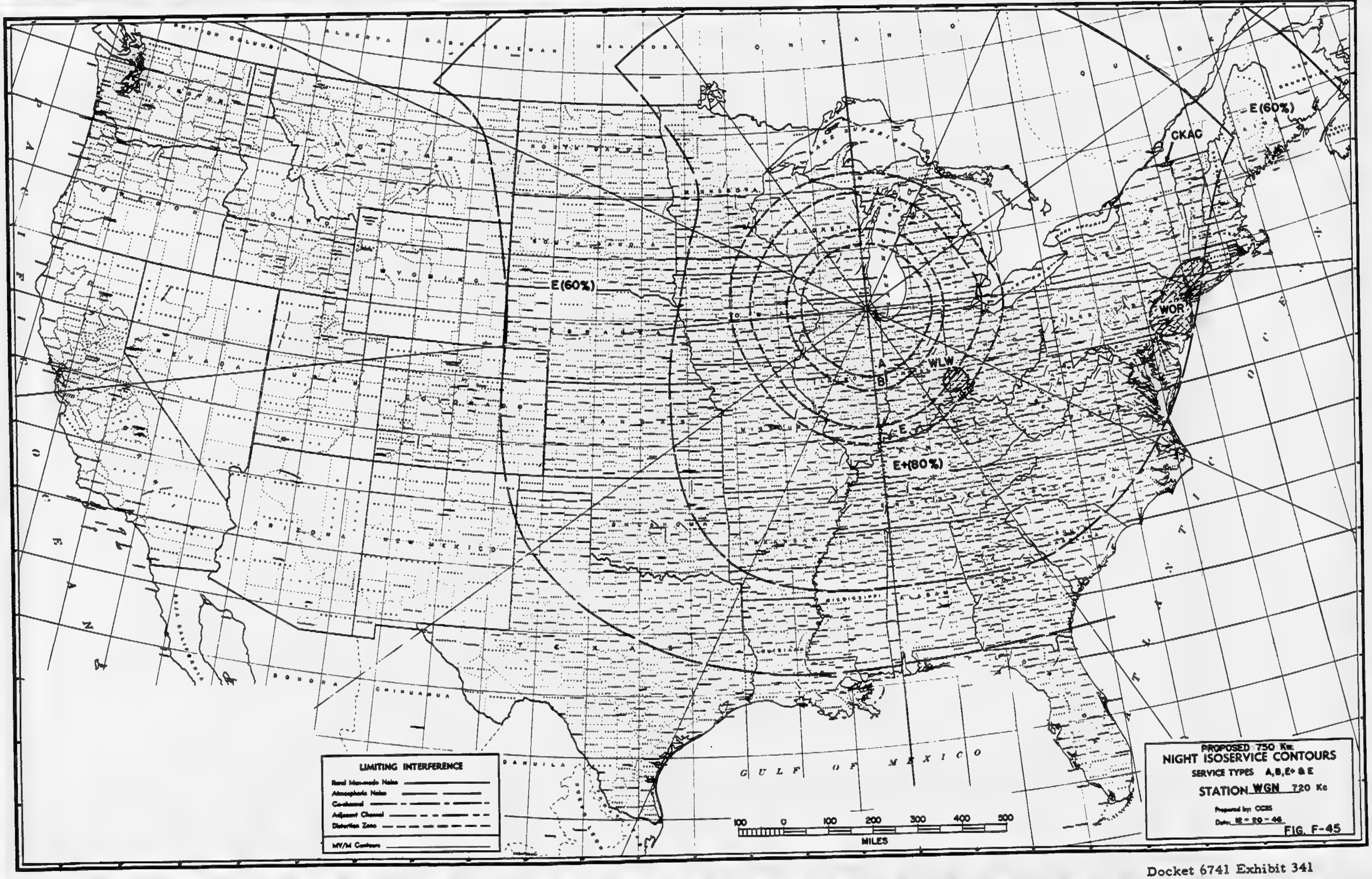
⊕ Indicates Station Location

Docket 6741 Exhibit 340

POPULATION DISTRIBUTION OF THE UNITED STATES: 1940

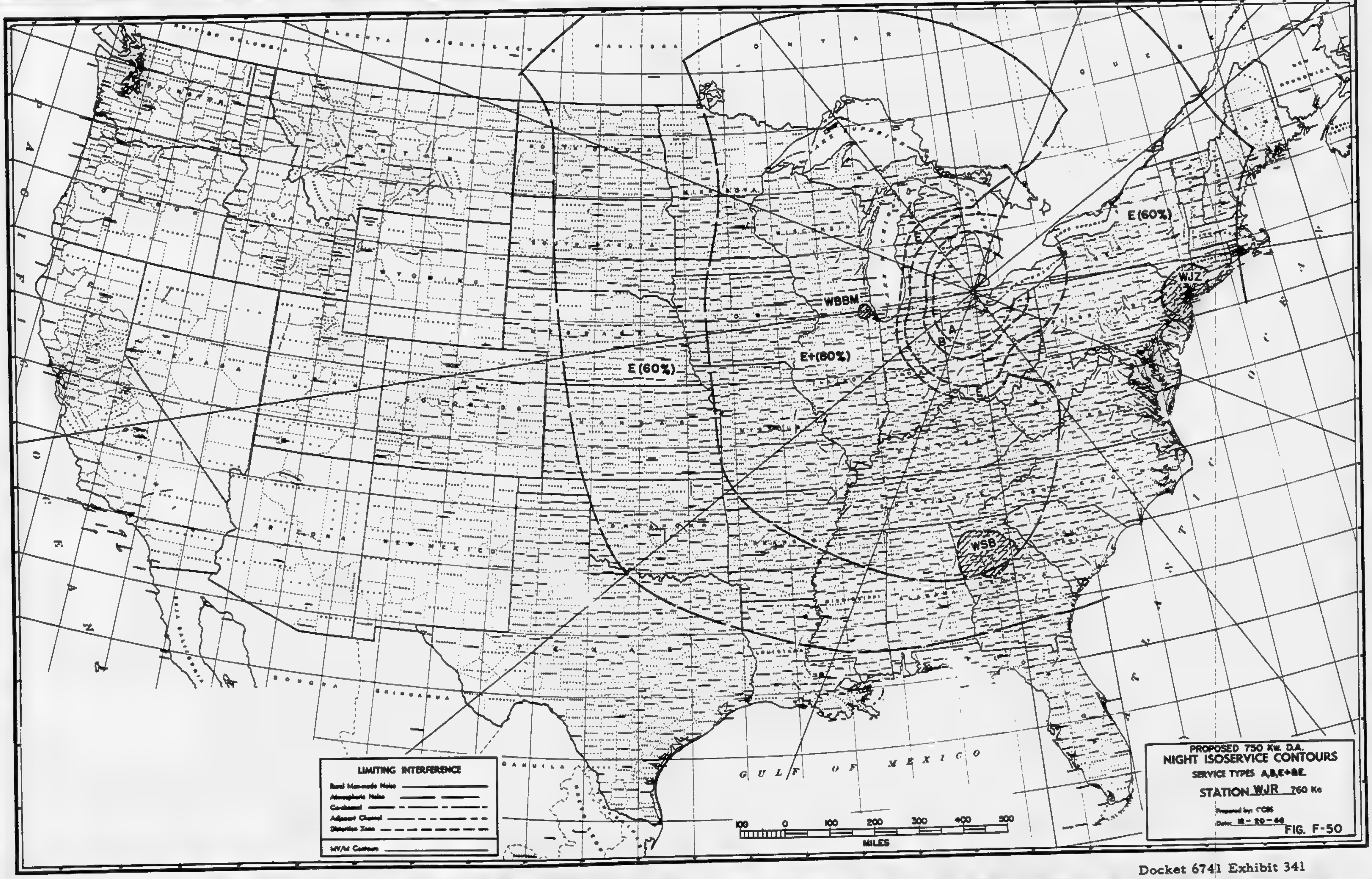

WBZ
WHAM
WJR
WLS
WENR
WGN
WHO
KSL
KGO
KPO
KOA
KFI
WCAU
KDKA
WLW
WHAS
WSM
WSB
WFAA-WBAP
WOAI
WWL
1 DOT REPRESENTS 2,000 INHABITANTS
100 0 100 200 300 400 500
MILES
DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

PROPOSED
750 KW STATIONS
PREPARED BY: C.C.B.S.
24 Feb 1947.
FIG. 41


E(60%)
E(60%)
CKAC
WOR
WLW
A
B
E
E+(80%)
BRITISH COLUMBIA
ALBERTA
SASKATCHEWAN
MANITOBA
ONTARIO
QUEBEC
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEXICO
WASHINGTON
OREGON
IDAHO
MONTANA
WYOMING
NEVADA
UTAH
COLORADO
ARIZONA
NEW MEXICO
NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
KANSAS
OKLAHOMA
TEXAS
MINNESOTA
MISSOURI
ARKANSAS
LOUISIANA
MISSISSIPPI
SONORA
CHIHUAHUA
COAHUILA
LIMITING INTERFERENCE
Rural Man-made Noise
Atmospheric Noise
Co-channel
Adjacent Channel
Distortion Zone
MV/M Contours
100 0 100 200 300 400 500
MILES

PROPOSED 750 Kw.
NIGHT ISOSERVICE CONTOURS
SERVICE TYPES A, B, E+ & E
STATION WGN 720 Kc
Prepared by: CCBS
Date: 12 - 20 - 46

FIG. F-45


WBBM
WJZ
WSB
E(60%)
E(60%)
E+(80%)
A
B
E
O N T A R I O
Q U E B E C
GULF OF MEXICO
LIMITING INTERFERENCE
Rural Man-made Noise
Atmospheric Noise
Co-channel
Adjacent Channel
Distortion Zone
MV/M Contours
100 0 100 200 300 400 500
MILES

PROPOSED 750 Kw. D.A.
NIGHT ISOSERVICE CONTOURS
SERVICE TYPES A,B,E+&E.
STATION WJR 760 Kc
Prepared by: CCBS
Date: 12-20-46

FIG. F-50

BRIEF FOR APPELLEE-RESPONDENTS

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,498

THE GOODWILL STATIONS, INC.
Appellant
v.
FEDERAL COMMUNICATIONS COMMISSION,
Appellee

TRANSCONTINENT TELEVISION CORPORATION, *et al.*,
Intervenors.

No. 17,499

WGN, INC.,
Appellant
v.
FEDERAL COMMUNICATIONS COMMISSION
Appellee

TRANSCONTINENT TELEVISION CORPORATION, *et al.*,
Intervenors.

No. 17,500

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Petitioners
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UNITED STATES OF AMERICA and the
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Respondents

TRANSCONTINENT TELEVISION CORPORATION, *et al.*,
Intervenors.

ON APPEAL FROM AND PETITION TO REVIEW ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION

LEE LOEVINGER,
Assistant Attorney General

LIONEL KESTENBAUM, c/
PATRICK M. RYAN No
Attorneys
Department of Justice

MAX D. PAGLIN, c/
General Counsel

DANIEL R. OHLBAUM, c/
Associate General Counsel

RUTH V. REEL,
Counsel

HERMAN I. BRANSE, c/
Counsel

Federal Communications Commission
Washington 25, D.C.

STATEMENT OF QUESTIONS PRESENTED

The questions are correctly stated by appellants-petitioners.

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*Cases chiefly relied upon are marked by an asterisk.

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AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.
WXYZ, INC.,
WLS, INC.,
WESTINGHOUSE BROADCASTING COMPANY, INC.
CITY OF NEW YORK MUNICIPAL BROADCASTING
SYSTEM (WNYC),
Intervenors.

ON APPEAL FROM AND PETITION TO REVIEW ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR APPELLEE-RESPONDENTS

JURISDICTIONAL STATEMENT

This consolidated proceeding involves three cases which seek review of the same Commission orders. Case Nos. 17,498 and 17,499 are appeals under Section 402(b) of the Communications Act, 47 U.S.C. 402(b), filed by The Goodwill Stations, Inc. (WJR), licensee of clear channel station WJR on 760 kc at Detroit, Michigan, and WGN, Inc. (WGN), licensee of clear channel station WGN on 720 kc at Chicago, Illinois. The appeals seek review of (1) a Report and Order of the Commission in Docket No. 6741, adopted September 13, 1961 and released September 14, 1961 (R 4085-4146), insofar as the Commission amended Section 3.25 of the rules to permit the assignment of an additional unlimited time station on the frequencies 760 kc and 720 kc and declined to amend Section 3.21(a)(1) of the rules to authorize power in excess of 50 kw; (2) a Memorandum Opinion and Order in Docket No. 6741 adopted November 21, 1962 and released November 28, 1962 (R. 4925-4948), reaffirming the Report and Order released September 14, 1961 and denying various petitions for reconsideration, including those filed by WJR and WGN; and (3) a Memorandum Opinion and Order adopted November 21, 1962 and released November 27, 1962 (R. 5071-5073), which returned applications tendered by WJR and WGN for authority to increase power from 50 kw to 750 kw and denied their petitions for waiver of Section 3.21(a)(1) of the rules. Case No. 17,500 is a petition for review filed jointly by WJR and WGN, seeking review of the same three orders of the Commission under Section 402(a) of the Communications Act, 47 U.S.C. 402(a), and the Judicial Review Act of 1950, 5 U.S.C. 1031 et seq.

On February 25, 1963, the Commission, appellee in Case Nos. 17,498 and 17,499, and respondent in Case No. 17,500, moved the Court for an order partially dismissing the Notices of Appeal in Case Nos. 17,498 and 17,499 and partially dismissing the Joint Petition for Review in Case No. 17,500. The United States of America, respondent in Case No. 17,500, joined in the motion with respect to that case. An Answer to Motion to Dismiss was filed by WJR and WGN on March 4, 1963. By order dated April 16, 1963, the Court scheduled times for the filing of further briefs, if any, on the jurisdictional issue, set the matter for oral argument on May 23, 1963, and further provided that the resolution of this issue should not delay the briefs to be submitted on the merits.

COUNTERSTATEMENT OF THE CASE

A. Introduction - The Standard Broadcast Classification Structure.[1]

Pursuant to long-standing practice and international agreement, all United States standard broadcast stations are assigned to 107 channels, each 10 kilocycles (kc) wide, in the frequency range 535-1605 kc. Stations operating on these frequencies transmit simultaneously two kinds of signals with different propagation characteristics. The groundwave signal travels closely along the earth's surface where its intensity, although diminishing rapidly with distance, remains relatively constant at any location day and night and from season to season. The portion of the energy which travels upward and outward from the transmitter into the upper atmosphere (the ionosphere), from which it is reflected back to earth at distances much greater than the reach of groundwave signals, is called the skywave signal. Skywave signals are affected by many more variables than groundwave signals, including latitude,, time of year, sunspot activity, weather, atmospheric noise and, particularly, the time of day. Skywave propagation is effective chiefly during the hours between sunset and sunrise and is present, to a lesser degree, during a 2-3 hour pre-sunset buildup and a similar post sunrise period of waning intensity. Such signals are less constant in intensity than groundwave signals, because of the continuous change in the characteristics of the ionosphere and other variables, resulting in "fading" from time to time in skywave reception. Although skywave signals render a useful nighttime service over wide areas, the service is considered secondary under the Commission's rules because of its intermittent nature. The more constant groundwave service is considered primary service, and an area lacking such service is called a "white" area.

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[1] This introductory statement as to the nature of the standard broadcast service, the rules governing it, and the problem involved, summarizes a similar introductory statement in the Commission's Report and Order of September 14, 1961 in Docket No. 6741, which is pending before the Court for review in these cases (R. 4086-4091).

With the objectives of providing: (a) some service of satisfactory signal strength to all areas of the country, (b) as many program choices to as many listeners as possible and (c) service of local origin to as many communities as possible, the Commission has by rule divided the standard broadcast frequencies into three groups: local, regional and "clear channels". Each class is governed by different rules imposing restrictions designed to accomplish the purpose for which the class was intended. Stations using the local and regional channels share the frequencies with stations operating in other communities and protection of their service from objectionable interference is confined to the groundwave signal. Skywave or secondary service free from objectionable interference is provided only by Class I stations assigned to clear channels, and this service is made possible only by rigid restrictions on the number of stations which may be assigned to the clear channels at night and by limitations on the radiations of the secondary stations assigned to those channels.

Prior to the rule amendments at issue in these cases, the Commission's rules reserved twenty-four of the United States clear channels for the exclusive use at night of a single Class I-A station.[2/] On the remaining 23 United States clear channels, the rules permitted the assignment of 1 or 2 Class I-B stations under conditions requiring mutual protection through the use of directional antennas. The assignment of secondary, Class II, stations was permitted on the clear channels under conditions designed to protect the widespread service to be rendered by the Class I station occupying the channel.[3/] Among the re-

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2/ In 1958 the rules were amended to permit the assignment of two full-time stations on the Class I-A frequency 770 kc. See American Broadcasting-Paramount Theatres, Inc. v. Federal Communications Commission, 108 U.S. App. D.C. 83, 280 F.2d 631.

3/ Class II stations were expected to provide only a groundwave service and were required by use of a directional antenna, limitations on antenna height and power, or other means, to protect the wide service area of the Class I station.

strictions imposed by the rules on each class of stations, were maximum power limitations, the limit for Class I and II stations being 50 kw.

While this standard broadcast allocation structure succeeded in providing a plenitude of signals to the populous centers of the United States, there has been a persistent scarcity of service in the sparsely settled areas of the country at night. About half of the total land area of the United States, containing approximately 25 million people, lacks nighttime primary service. The greater part of the land area lacking nighttime primary service lies west of the Mississippi; the greater number of persons lacking primary service live in the more densely populated eastern section. Persons living in the Western half of the United States have fewer skywave services and a choice among skywave signals is not generally available to a substantial part of the West (R. 4088, par. 30). Persons living in the East and Mid-west generally have more skywave services, since many of the Class I-A clear channel stations are clustered in the eastern portion of the country as a result of the greater population density and the superior capacity of such communities to provide economic support for these stations (R. 4091, par.12). Because of unavoidable limitations on the nighttime interference-free service range of the local and regional stations due to interference caused by skywave propagation, any significant improvement of primary or secondary standard broadcast service to the underserved areas of the country can only be provided on the clear channel frequencies.

B. The Clear Channel Proceeding

On February 20, 1945 the Commission instituted a rule making proceeding, Docket No. 6741, to determine whether and in what manner it would serve the public interest to amend the rules governing the clear channels (R. A-B). The proceeding was instituted largely as a result of insistent claims by interested persons that the clear channel concept of permitting only one station to operate at night on 24 of the channels available for standard broadcasting was wasteful of valuable spectrum space and that the power limitation of 50 kw was not an efficient utilization of the frequencies involved (R.4086, par. 1). The issues specified by the Commission went, *inter alia*, to questions of whether a geographical redistribution of clear channel stations was required by Section 307(b) of the Communications Act and would be economically feasible, whether the number of clear channels should be increased or decreased, what frequencies should be designated as Class I-A or Class I-B channels, what power should be authorized, and whether power in excess of 50 kw would unfavorably affect the economic ability of other stations to operate in the public interest (R. A-B).

During extended hearings in 1946 and 1947, the testimony of numerous interested persons was taken and a voluminous record was compiled (R. 4089, par. 9). Two conflicting alternatives were widely urged as the measures best calculated to make more efficient use of the clear channel frequencies. On the one hand, it was proposed that the Commission amend the rule limiting the power of Class I-A stations to 50 kw and authorize higher power to permit these stations to improve and extend their skywave service (R. 4089, par. 8). The alternative proposal was that the Commission increase the number of unlimited time stations permitted on the clear channels to provide additional primary service to underserved areas of the country (R. 4089, par. 8). The Commission was unable to resolve the basic controversy at that time and because of various complicating factors postponed further consideration of the matter until 1958 (R. 4089, par. 8).[4]

On April 15, 1958, the Commission issued a further notice of proposed rule making in Docket No. 6741, inviting comments on proposals to open 12 specified Class I-A channels for additional unlimited time assignments, to reserve for later determination proposals to increase power on the remaining Class I-A channels, and to leave undisturbed the Class I-B channels (R. 1-29). On 5 of the 12 channels suggested for additional assignments it was proposed that a new directionalized Class I station be added and that the existing Class I station be required to directionalize, with the result that each station would afford mutual protection from interference to the areas served by the other (R. 17, 18). On the other 7 channels, unlimited time Class II stations were proposed to be assigned in underserved areas, (R. 18). Comments in response to this notice persuaded the Commission that the requirement that five existing Class I stations directionalize their operations would result in substantial dislocations of existing skywave service and the unwarranted creation of new areas lacking primary nighttime service (R. 1795, par. 7).

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[4] These complicating factors included changing treaty obligations, the necessity of disposing of precedent collateral problems like the daytime skywave proceeding, itself difficult of settlement, and the emergence of television as a vigorous competitor to the standard broadcast service. See Clear Channel Broadcasting Service v. United States, 109 U.S. App. D.C. 88, 284 F.2d 222.

By a third notice of further proposed rule making, released on September 22, 1959, the Commission invited comments on a proposal to amend the rules to provide for the assignment of new Class II stations on 23 of the clear channels (R. 1793-1815).[5/] Under this proposal, the existing Class I-A stations would continue to operate non-directionally with 50 kw power, but each would share its frequency at night with one new Class II station to be located in a designated area and to operate directionally

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5/ These 23 channels included 22 of the 24 Class I-A frequencies, excluding 660 and 770 kc, and also included Class I-B frequency 1030 kc.

with at least 10 kw power (R. 1798, par. 13). Although stating that it was not persuaded at that point that higher power would be in the public interest, the Commission also provided opportunity in the third notice for parties to update the record on proposals to increase the maximum power for Class I-A stations (R. 1799, par. 17).

More than 100 comments and reply comments were filed pursuant to the third notice (R. 4091, par. 12). The conflicting views as to the desirability of the basic alternatives of higher power versus duplication of stations, persisted (R. 4091, par. 12). The advocates of super power urged that improved standard broadcast service to areas lacking primary service could be achieved only through improved and increased skywave service, and that this would require an increase in maximum power to 500 or 750 kw. Others, opposing higher power and supporting duplication contended that since many Class I-A stations are clustered in the eastern portion of the country, with a nighttime skywave service range of approximately 700 miles at 50 kw power, the needed improvement should come from the assignment of additional unlimited time stations on the Class I-A frequencies on which only one station operated nighttime.

C. The Commission's Report and Order in Docket No. 6741

On September 14, 1961, the Commission issued a Report and Order in Docket No. 6741, in which it determined that the public interest would be served by amending the clear channel rules

(Sections 3.21, 3.22, 3.24, 3.25, 3.28, and 3.182 of the Commission's rules, 47 CFR 3.21, 3.22, 3.24, 3.25, 3.28, and 3.182) to permit the assignment of one Class II-A unlimited time station on each of 13 Class I-A channels (R. 4085-4146). Under the amended rules (Section 3.25 and 3.182), the existing Class I-A stations on these channels would continue to operate nondirectionally with 50 kw power, and would be protected from nighttime co-channel interference to the 0.5 mv/m, 50 percent skywave contour (R. 4103, 4104). The Commission found that the assignment of an unlimited time Class II-A station on 11 of these Class I-A channels, at the Western location specified in Section 3.22(a) of the amended rules, would serve the "important and immediate objective of providing nighttime primary service to white areas" in the underserved West (R.4099, par. 34).[6] It further found that a Class II assignment on

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[6] Section 3.22(a) provides as follows (R. 4132-4133):

> Table of assignments. -- One Class II-A station may be assigned on each channel listed in the following table within the designated State or States:

Channel (kc)	Existing Class I Station	State(s) in which Class II-A assignment may be applied for
670	WMAQ, Chicago	Idaho
720	WGN, Chicago	Nevada or Idaho
780	WBBM, Chicago	Nevada
880	WCBS, New York	North Dakota, South Dakota, or Nebraska
890	WLS, Chicago	Utah
1020	KDKA, Pittsburgh	New Mexico
1030	WBZ, Boston	Wyoming
1100	KYW, Cleveland	Colorado
1120	KMOX, St. Louis	California or Oregon
1180	WHAM, Rochester	Montana
1210	WCAU, Philadelphia	Kansas, Nebraska, or Oklahoma

the two other Class I-A channels (750 kc and 760 kc) was warranted to provide a solution to special frequency adjustment problems in Anchorage, Alaska, and San Diego, California, which arose from United States treaty obligations (R. 4114-4116, par. 77-81).

The Commission's determination that duplication on these 13 Class I-A channels would serve the public interest rests additionally on its conclusion that it is now possible, particularly in the case of I-A stations located in or near the northeast portion of the country, to assign additional co-channel unlimited time stations to provide needed service at distant locations without causing undue interference to the wide area service rendered by the Class I-A stations (R. 4091, 4092, par. 13, 16). This possibility derives, the Commission stated (R. 4091, 4092, par. 13, 16), from a combination of factors, including modern techniques for directional transmission of signals[7/] and the long distances between the prescribed locations of the new stations and the transmitter sites of the existing stations. Because of these large mileage separations and the requirement that the new stations directionalize, if necessary, to protect the 0.5 mv/m, 50 percent skywave contour of the existing I-A station --

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[7/] The Commission found substantial support in the record for its conclusion that exclusive nighttime use of a channel by a single station is less justifiable now than it was when the clear channels were first allocated in this way (R. 4091, par. 13). It noted that since that time techniques have been (cont'd) generally located approximately 700 miles from its transmitter site, the most useful wide area secondary service of the I-A station would be preserved (R. 4092, 4095, par. 16, 24). The Commission found that any skywave service outside this contour which might be lost would be of a low order and would occur in areas where there were a number of other available services (R. 4092-4093, par. 16). The Commission concluded that such interference as duplication would cause to minor, fringe reception beyond the 0.5 mv/m, 50 percent skywave contour was justified by the resultant provision of primary service to white areas in the underserved West and the solution of two special frequency adjustment problems (R. 4092, 4095, 4114-4116, par. 16, 24, 77-81).[8/]

7/ (cont'd) established and highly developed for directional transmission of signals, with a high degree of suppression now possible to protect the service areas of co-channel stations. In addition, heterodyne interference resulting from uncontrolled deviations from the assigned frequencies has been substantially eliminated. (Ibid.)

8/ The Commission rejected a suggestion that more than one unlimited-time Class II station be authorized on the same I-A channel, on the ground that it would be preferable to await future developments before making this decision (R. 4101, par. 43). It stated (ibid.): "After we have the benefit of the manner in which the new unlimited time Class II stations are utilized, and details of actual performance, interference, etc., become available, we will be in a position to determine whether the public interest warrants assignment of additional unlimited time facilities on these channels, and, if so, to determine under what conditions they should be permitted."

The Commission concluded that the simultaneous reallocation of all Class I-A channels to achieve a more equitable geographical distribution would be administratively cumbersome and time-consuming, and that this measure was, in any event, not justified before the Commission had had an opportunity to evaluate the effectiveness of the present limited reallocations (R. 4092, par. 14, 15). The Commission also declined to amend Section 3.21(a)(1) of the rules, which limits the power of clear channel stations to 50 kw, stating that it was unable to conclude from the information presently available that the social and economic objections against higher power had been sufficiently met, nor to make a finding that higher power was in the public interest (R. 4094, par. 20).

However, the Commission concluded that the high power proposal contained enough merit to warrant further consideration in future rule making proceedings, when the proposal might be evaluated in light of such improvement in service as would result from duplication of the 13 Class I-A channels (R. 4094, par. 20, 21). In order not to frustrate the possibility of authorizing higher power on some channels in the future, the Commission decided to retain the 12 remaining Class I-A channels in status quo and to leave undecided at this time the question of whether duplication, high power, or some other measure would ultimately be adopted for these channels (R. 4093, 4094, par. 18, 20, 21).

In selecting the Class I-A frequencies now to be duplicated or to remain in status quo, the Commission stated that the "basic determinant is the question of whether, taking into account the numerous circumstances affecting each channel and the resultant overall pattern of service, it is best suited to shared use or the preservation of possibilities of wider service from the existing Class I-A station through utilization of higher power" (R. 4096, par. 26). It listed, as some of the key factors bearing on this judgment, the following (R. 4096-4097, par. 26):

a. Location of needful white areas.

b. The possibilities for providing a primary nighttime service in those white areas at sufficient distance from the Class I-A station to permit requisite protection of the generally usable portion of the existing station's skywave service -- i.e., the service area within its 0.5 mv/m 50% skywave contour.

c. Due protection to existing co-channel U.S. daytime stations and to U.S. stations on adjacent channels.

d. Consideration of adjacent channel interference to stations located in neighboring countries, and to foreign co-channel stations to which the United States is committed, under international agreements, to afford a stated degree of protection.

e. Avoidance of adjacent channel interference among new unlimited-time stations assigned to the Class I-A clear channels.

f. The location of white areas apparently beyond the reach of foreseeable new stations which could provide a nighttime primary service.

g. Existing skywave services in the foregoing areas and the consequent benefits from improved additional skywave services.

> h. The location of Class I-A stations so situated -- with reference to geographic relationships to the needful areas and co-channel and adjacent channel domestic and foreign interference considerations -- as to indicate that they would be best adapted to the provision of additional and improved skywave services to the needful areas.

The Commission further stated (R. 4097, par. 27):

> In the case of no single channel would all of the foregoing determinants uniformly indicate that it be earmarked for additional unlimited-time assignment or that it be held in status quo for future consideration of alternative action. In each case we have arrived at our judgment by the painstaking process of determining and evaluating all the pertinent factors and deciding, on net balance, which course would best serve the public interest both in usage of the individual channel and in terms of the resultant assembled pattern of additional nighttime primary services, on the one hand, and the potential for additional and improved skywave services in needful areas, on the other hand. In weighing our choices of channels to be left at this time in status quo we have taken into account the desirability of endeavoring to preserve the potential of at least four reasonably reliable and satisfactory skywave services throughout all white areas.

The Commission went on to give specific reasons for its choice with respect to each channel (R. 4098, 4099, 4113-4123, par. 30-33, 36-37, 71-94). Five of the I-A channels reserved in status quo were chosen because of their Western location and potentiality for improved skywave service in the underserved West (R. 4098, par. 30, 33); four were selected in order to preserve their potential for improving skywave service to the underserved Southeast (R. 4098, par. 32); and three were included because of special considerations making additional assignments inappropriate (R. 4098, par. 31).[9] Of the channels to be duplicated, only 720 kc and 760 kc are pertinent to the issues in these cases. Appellant-petitioner WGN, Inc. (WGN) is the licensee of a Class I-A station on 720 kc at Chicago, Illinois, and appellant-petitioner The Goodwill Stations, Inc. (WJR) is the licensee of a Class I-A station on 760 kc at Detroit, Michigan.

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[9] On the frequencies 660 kc and 770 kc, unlimited-time assignments, in addition to the Class I-A stations, were already operating (R. 4098, par. 31). The Commission took no action (cont'd)

With respect to WGN's frequency 720 kc which would be duplicated in Nevada or Idaho (R. 4133), the Commission stated (R. 4099, par. 37):

> The Class I-A stations on 670, 720, 780, and 890 kc are located in Chicago and, while they are, of course, west of the group just discussed [located at or near the northern or eastern boundaries of the country], they still offer useful opportunity for assignment of unlimited-time stations in the far West. Several western states will meet spacing requirements and additionally, the useful skywave service provided by the Chicago I-A stations is confined to the region of the Great Lakes, which insures a minimum impact by the new co-channel, unlimited-time, Class II stations to their skywave service. An added consideration in selecting the Chicago I-A frequencies for duplication is the limited potential which they have for improving skywave service in areas which need it. Adjacent-channel Class I operations in New York would limit radiation to the east and requirements of protection to stations in Cuba and Mexico would limit radiation to the south. Their potential for improving skywave service to the west, moreover, is not so great as that of the Class I-A channels on which we are presently retaining the status quo.

The Class II assignment of WJR's frequency 760 kc was at San Diego, California, for use by Station KFMB, which was required to discontinue its use of the frequency 540 kc as a result of the United States-Mexican Broadcasting Agreement

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9/ (cont'd) with respect to 830 kc because of the pendency of an adjudicatory proceeding involving Station WNYC's use of that frequency during nighttime hours, in addition to the Class I-A station (ibid.).

(R. 4114, par. 78). The Commission stated that after a "painstakingly careful review of all the availabilities -- taking into account requirements of protection to Mexican stations on other Class I-A clear channels, the availabilities of some other Class I-A clear channels for new Class II-A stations at other places in the United States, domestic and Canadian co-channel and adjacent-channel limitations on the allocation of individual Class I-A clear channels, and related conditions," it had concluded that 760 kc was the preferable choice for this purpose (R. 4115, par. 78). The Commission further stated that "were it not for the special and compelling circumstances which justify the exceptional use of these frequencies [750 kc and 760 kc] as herein provided for, we would have preferred to allocate them for stations which would provide a first primary service in white areas." (R. 4116, par. 81). Since 760 kc was not being duplicated for this purpose, the Commission restricted the San Diego assignment to a power of 5 kw, the power presently used by KFMB on 540 kc (R. 4115, par. 79).[10]

After discussing various other pertinent matters, including the standards governing the new station assignments[11] and the protection to be accorded various classes of stations, the Commission summed up its resolution of the basic controversy in the clear channel proceeding as follows (R. 4125, par. 101):

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[10] The 11 new Class II assignments governed by Section 3.22 of the rules are required to operate with not less than 10 kw power nighttime (R. 4103, par. 46).

[11] Section 3.22(b) provides that no Class II assignment will be made on the 11 frequencies being duplicated to provide additional primary service "unless at least 25 percent of its nighttime interference-free service area or at least 25 percent of the population residing therein receives no other interference-free nighttime primary service" (R. 4133).

> In the hard-fought, head-on conflict between the two basic approaches of extending the reach of major stations on clear channels or increasing the numbers of stations permitted on these channels, much valuable data and analysis have been placed before us by the proponents of both approaches. Recognition is due to the fact that some merit attaches to very many of the proposals which have been urged upon us, including some of those which we herein reject. Our essential task in this proceeding has been to select among the myriad solutions offered those which, on net balance, taking into account the many pertinent considerations, would best serve the public interest. The opposed factors bearing upon our judgments in some instances are closely balanced. While recognizing that much can be said for numerous alternative approaches, we now conclude that the course laid out herein, both as reflected in the rule changes now adopted and in the preservation for the time being of the status quo on 12 class I-A clear channels, represents the best solution available at this time.

Accordingly, pursuant to the authority contained in Sections 4(i) and (j); 303(a), (b), (c), (d), (f), (g), (h), and (r); and Section 307(b) of the Communications Act (47 U.S.C. 154(i) and (j); 303(a), (b), (c), (d), (f), (g), (h), and (r); and 307(b)), the Commission amended its rules in the manner set forth in the appendix to its decision, effective October 30, 1961 (R. 4127-4143). Section 1.354(d) of the amended rules provided that no action would be taken by the Commission on any application for a new Class II-A station authorized by the amended rules prior to January 30, 1962 (R. 4130).

When the rulemaking order was promulgated on September 14, 1961, there were pending before the Commission applications filed by WJR and WGN for renewal of their licenses. WJR's outstanding license for operation on 760 kc had an expiration date of October 1, 1961. On October 4, 1961, the Commission granted WJR a renewal of license on condition that "operation under this renewal is subject to whatever interference may be caused to Station WJR, outside of its 0.5 mv/m 50 percent skywave contour, by a co-channel unlimited time Class II station assigned to San Diego, California, pursuant to the Report and Order in Docket 6741" (R. 5032). WGN's outstanding license for 720 kc had an expiration date of December 1, 1961, and its application for renewal of license was granted on January 3, 1962, after the effective date of the rule amendments (R. 5145).

D. The Memorandum Opinion and Order Denying Reconsideration

Some 22 interested persons filed petitions for reconsideration of the Commission's Report and Order, including WJR (R.4357-4380) and WGN (R. 4381-4409). Both WJR and WGN requested that Class I-A channels not be duplicated and that stations operating on the clear channel frequencies be authorized to operate at higher power. In the event that the Commission should adhere to its decision to permit duplication during nighttime hours on the frequencies occupied by WJR and WGN, each contended that its outstanding license was being modified, and sought an evidentiary hearing to show that duplication of the Class I-A frequencies in general, and or its frequency in particular, was not in the public interest.

In a Memorandum Opinion and Order released on November 28, 1962 (R. 4925-4948), the Commission denied the petitions for reconsideration and requests for evidentiary hearing. In the latter connection, the Commission pointed out that the clear channel rule amendments were the culmination of an extensive rule making proceeding, entailing sixteen years of hearing, and that no interested person could "seriously contend that he was not given every opportunity fully and fairly to present his views for consideration" (R. 4925, par. 2). It further stated that the determination of any further hearing rights must in each instance await concrete proposals for placement of new stations and the narrowing of issue on consideration of such applications (*ibid*.).

On the merits, the Commission stated that it had re-examined its basic decision and re-affirmed its conclusion that, on balance, the rule amendments adopted represented the best solution available at this time (R. 4945, par. 84). It recapitulated the basic problem in these terms (R. 4929, par. 16):

> Higher power offers improvements in nighttime secondary service while duplication holds out the promise of limited added nighttime primary service. Moreover, questions of social and economic import arise in the higher power approach which complicate the simple engineering choice. Duplication of all I-A channels would not bring primary service to

> all white areas and would largely preclude the benefits of added secondary service which higher power could bring. Either alternative leaves much to be desired and we have attempted through a judicious combination of the possible advantages of the two approaches to reap some of the benefits of each. Thus, through duplication we extend to as many persons as possible the benefits of a first nighttime primary service. This type of service is better and more to be desired than skywave service. We have at the same time, however, retained the status quo on a sufficient number of channels which, should economic, social, and other considerations indicate higher power is in the public interest, can bring a total of four skywave services to practically the entire United States.

The Commission stated that a majority of the Commissioners still felt that further studies were needed to determine whether authorization of higher power would be in the public interest (R. 4926, par. 9). The majority likewise remained of the view that the additional unlimited-time assignments provided for in the amended rules could be effectuated without substantial impairment of the wide-area service presently rendered by Class I-A stations, and without frustration of the possibility of sufficient improvement of service through higher power -- if that were later concluded to be appropriate - - on the other 12 channels better suited for that approach, and perhaps also on some of the 13 now duplicated (R. 4927, Par. 9).[12]

Upon re-appraisal the Commission also re-affirmed its decisions with respect to the best use for each frequency, stating (R. 4929-4930, par. 17):

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[12] Commissioner Lee dissented from the Report and Order of September, 1961, and from the Memorandum Opinion and Order denying reconsideration.

> A complete reappraisal, frequency by frequency, has been made of the use to which each of the Class I-A clear channels should be put. A few channels, whether because of technical or international considerations or for policy reasons, clearly fall within the duplicated or the reserved group as set forth in our basic decision. Some others, while the engineering considerations might not point unmistakeably to a clear-cut decision that they fall within a particular one of the two categories, have a preponderance of reasons why one solution is to be preferred over the other. In the case of a few, while higher power might be technically feasible, the area they would serve with a secondary service at higher power is otherwise provided for either by present operations or by possible operations at higher power on the reserved frequencies. In a very few cases the choice appears rather difficult when considering the channel on an individual basis. However, applying the general guidelines mentioned at paragraph 26 of the Report and Order of September, 1961, and considering how the two basic objectives are met by the combination of frequencies contained within each group, we are convinced that the decisions, while not easy, are sound.

With respect to WGN's frequency,720 kc, and those licensed to other Chicago stations, the Commission reiterated its judgment that duplication was in the public interest because it was technically feasible and desirable to assign Class II-A stations on these frequencies in Idaho, Nevada, and Utah to provide nighttime primary service to underserved areas of the West (R. 4933, par. 29). Concerning the skywave service potential of these stations at higher power, the Commission stated that protection requirements to foreign and domestic adjacent channel assignments would limit radiation eastward and to the south, and that these frequencies were not needed, nor as well suited as others, for providing skywave service to the West should higher power some day be authorized (R. 4933, par. 30).

Upon reviewing its decision to duplicate WJR's frequency, 760 kc, the Commission again concluded that 760 kc was the best I-A frequency available to solve the frequency adjustment problem of KFMB at San Diego, California (R. 4934-4935, par. 38-40). It stated that after an exhaustive study of all the frequencies, it had found that only 760 kc and 830 kc were feasible for use at San Diego (R. 4934, par. 38). Since the duplication plan contemplated nighttime operation by no more than one additional station, and since Station WNYC, New York City, was already operating nighttime on 830 kc in addition to the dominant I-A station, further duplication on 830 kc was precluded (R. 4934-4935, par. 38). Because of international co-channel and adjacent channel restrictions, the only other possibility in the frequncies below 760 kc, was 550 kc, which the Commission rejected as unsuitable (R. 4935, par. 39). KFMB could not operate at its present 5 kw power on 550 kc and afford domestic co-channel stations the required protection unless it were to directionalize southward and to the west -- in which case much of its signal would be wasted over the Pacific Ocean (R. 4935, par. 39). Moreover, studies in the record showed that such a move would result in a reduction in KFMB's daytime coverage from 18,342 square miles to 1,921 square miles and in nighttime coverage from 884 square miles to 516 square miles (R. 4935, par. 39; 3173).

And, finally, the Commission noted that much Congressional interest had been manifested in the subject of higher power (R. 4926, par. 4). On June 7, 1938, the Senate had adopted a resolution characterizing the use of power in excess of 50 kw by standard broadcast stations as "definitely against the public interest" and expressing the sense of the Senate that power in excess of 50 kw should not be authorized (S. Res. 294, 75th Cong., 3rd Sess.). On July 2, 1962, the House of Representatives adopted a resolution expressing the sense of the House that the Commission should authorize power in excess of 50 kw if it found such operation would serve the public interest and that it should not authorize nighttime duplication for a period of one year (H. Res. 714, 87th Cong., 2d Sess.). The Commission stated that a reference to the 1938 Senate Resolution in its Report and Order was not of decisional significance, but was intended merely as a recitation of historical fact (R. 4926, par. 8). It emphasized that "the Commission determined, on grounds wholly independent of the 1938 Senate Resolution, that higher power should not be permitted at this time" (R. 4926, par. 8).

While recognizing that a resolution of one House was not legally binding on it, the Commission indicated that a current joint expression of Congressional views would be helpful since the 1938 Senate Resolution and the 1962 House Resolution looked in opposite directions (R. 4927, par. 10). It accordingly stated that it would refrain from authorizing any additional nighttime stations on I-A clear channels until July 2, 1963, to afford Congress an additional opportunity to enact legislation, but that no administrative delay beyond that date in implementing the reaffirmed rule changes was contemplated, in the absence of controlling legislation (R. 4927, par. 11). The Commission also pointed out that the Committee Report (H. Rept. 1954, 87th Cong., 2d Sess.) accompanying the 1962 House Resolution erred in stating that an opportunity was available for Class I-A stations to file applications for higher power (R. 4928, par. 12). The Commission stated (R. 4928, par. 12):

> A longstanding Commission rule pertaining to standard broadcast stations provides for no power in excess of 50 kilowatts. One of the reasons this proceeding was initiated was to determine whether that rule should be changed. We have concluded that the present 50 kw limitation should remain unchanged at this time. Thus, an application by a standard broadcast station to use power in excess of 50 kw would not be in conformity with the Commission's rules. In the case of those frequencies herein reserved for future disposition, a petition for rulemaking looking toward authorization of higher power could be entertained. In light of the Commission's decision, however, an application merely seeking power in excess of 50 kw is not acceptable and will be returned without prejudice.

E. The Memorandum Opinion and Order Returning the Applications for Higher Power.

On October 22, 1962, and November 13, 1962, respectively, WJR and WGN filed applications with the Commission seeking authority to operate at 750 kw power, each of which was accompanied by a petition for waiver of Section 3.21(a)(1) of the rules limiting the power of Class I stations to 50 kw (R. 5045-5067, 5152-5177). By a Memorandum Opinion and Order adopted November 21, 1962 and released November 27, 1962, the Commission denied the requests for waiver of the rule and returned the applications (R. 5071-5073). The Commission said that it had just determined in Docket No. 6741 that Section 3.21(a)(1) should not be amended at this time and that further study was required to determine whether power in excess of 50 kw would be in the public interest (R. 5072). Pointing out that rule making procedures were the proper vehicle for such study, the Commission ruled that advocates of higher power could appropriately present their case by a petition for rule making rather than by attempting to obtain consideration of individual applications inconsistent with present rules (R. 5072).

SUMMARY OF ARGUMENT

1. The Commission's action in amending the clear channel rules to permit the assignment of one additional full-time station on each of 13 I-A frequencies, is a reasonable and proper exercise of its rule making authority under Sections 303 and 307(b) of the Communications Act. In light of its present inability to find that higher power is socially or economically desirable, the Commission properly determined that the amended rules would further the purposes of Section 307(b) by effecting a more equitable and efficient distribution of standard broadcast service. Duplication of the 13 I-A frequencies will result in the provision of a first primary nighttime service to a substantial number of persons in the underserved West, and permit the continuation of two needed existing services, without impairing the most useful skywave service of the Class I-A stations. The reservation of the remaining 12 I-A frequencies in status quo will preserve the possibility of a future improvement in skywave service to underserved areas of the nation in the event that higher power is ultimately found to be in the public interest. The Commission's judgments as to whether the public interest would be better served by the duplication or reservation of particular channels are based on reasonable considerations related to the achievement of the foregoing objectives, and are within its competence.

2. The argument of WJR and WGN that the rule amendments effected a modification of their licenses without compliance with the requisite statutory hearing procedures, is foreclosed by Transcontinent Television Corporation v. Federal Communications Commission, 113 U.S. App. D.C. 384, 308 F.2d 339. The rule amendments did not become effective until after the expiration dates of all licenses issued to WJR and WGN under the old rules. Their current licenses were properly taken subject to the amendments and incorporate only the protection afforded by the new rules. WJR and WGN were accorded their right to be heard, though in accordance with rule making procedures, in a proceeding valid for the type of Commission action which resulted in the duplication of their frequencies.

3. The Commission's order returning the applications of WJR and WGN for higher power and denying a waiver of Section 3.21(a)(1) of the rules, is valid and proper. Applications in conflict with the Commission's rules may be dismissed without hearing. United States v. Storer Broadcasting Co., 351 U.S. 192, 202; Transcontinent Television Corp. v. Federal Communications Commission, 113 U.S. App. D.C. 384, 389, 308 F.2d 339, 344. In view of the determinations just made by the Commission in Docket No. 6741, it was not required to cover the same ground again upon requests for waiver of the rule limiting power to 50 kw.

ARGUMENT

I. THE COMMISSION'S DETERMINATION THAT THE PUBLIC INTEREST WOULD BE SERVED BY THE RULE AMENDMENTS ADOPTED IN DOCKET NO. 6741, IS REASONABLE AND CONSTITUTES A VALID EXERCISE OF ITS AUTHORITY. THE COMMISSION PROPERLY REFUSED TO AMEND SECTION 3.21(a)(1) OF THE RULES TO AUTHORIZE POWER IN EXCESS OF 50 KW BECAUSE OF ITS PRESENT INABILITY TO FIND THAT HIGHER POWER IS IN THE PUBLIC INTEREST.

The Commission's determination that the rule amendments adopted in Docket No. 6741 are the best measures available at this time for improving the admitted deficiencies in the standard broadcast allocation structure, has a clearly reasonable basis in the considerations summarized in the Counterstatement and better set forth in its Report and Order of September 1961 and the Memorandum Opinion and Order denying reconsideration.

There is no dispute in these cases as to the problems needing resolution. Much of the country receives no primary radio service at night. These "white" areas do generally receive skywave or secondary service, but such service is less desirable than primary service because it is of an intermittent nature and its availability depends upon a variety of factors including weather, sunspot activity, atmospheric noise, etc. The greater bulk of the area lacking nighttime primary service is located West of the Mississippi where there are also fewer skywave services than are available in most sections of the East. It is also generally agreed that more efficient use should be made of the 25 Class I-A clear channels. As the Commission stated (R. 4091, par. 13), unduplicated use of these clear channels with a 50 kw power ceiling is certainly an incomplete use of the channels, which leaves the United States far short of the attainable degree of service to underserved areas. Moreover, our right to I-A priority on the clear channels under international agreement may be challenged by neighboring countries, if we do not make fuller use of the channels (R. 4929, par. 15).

The Commission, recognizing that both of the alternative remedies widely advocated in Docket No. 6741, duplication or higher power, offered some advantages, was warranted in concluding that neither afforded an entirely satisfactory solution to the problems of improving service to white areas and otherwise making more efficient use of the clear channel frequencies. Because of modern directional antenna techniques, it is now possible to assign additional full-time stations on the I-A frequencies without substantially impairing the normal skywave service presently rendered by existing I-A stations operating at 50 kw power. Some additional primary service could be provided by duplication, but sizeable white areas would remain even with duplication of all I-A frequencies. While higher power would not eliminate white areas, it is technically feasible by use of higher power to accomplish a substantial extension and improvement of existing skywave services. However, the Commission was not persuaded on the showing before it that higher power is socially or economically desirable. Therefore, despite the merit of the engineering arguments supporting higher power, the Commission felt itself unable without further study to make a finding that higher power is otherwise in the public interest.

Since either alternative entails serious shortcomings, the Commission reasonably concluded that the public interest would be best served at this time by attempting "through a judicious combination of the possible advantages of the two approaches to reap some of the benefits of each" (R. 4929, par. 16). It preserved the possibility of ultimately authorizing higher power, when and if it should be able to make the requisite public interest finding, by reserving 12 I-A channels in status quo, a number the Commission deemed sufficient to bring a total of at least four skywave services to practically all of the United States (R. 4097, par. 27, 4929, par. 16). With respect to the remaining 13 I-A channels, the Commission concluded that the public interest would be better served if they were duplicated, both in order to extend to as many persons as possible the benefits of a first nighttime primary service -- a type of service which is "better and more to be desired than skywave service" (R. 4929, par. 16) -- and also in order to facilitate the continuation of needed existing services in San Diego and Alaska.

Thus, the Commission's decision to amend its rules to effectuate this compromise, which in the Commission's judgment is the best available solution at this time, has a reasonable basis. We further submit that the rule amendments constitute a proper exercise of the Commission's authority under Sections 303 and 307(b) of the Communications Act. The arguments of WJR and WGN to the contrary (Br. 24-42) merely reiterate the positions urged by the proponents of higher power in the controversy before the Commission. While these arguments contain some merit, as the Commission recognized in rejecting them (R. 4125, par. 101), they do not demonstrate that the Commission has abused its discretion or exceeded its statutory authority.

Pointing to the undisputed circumstances that duplication will provide only a comparatively small increment in primary service, that unavoidable white areas must continue to rely on skywave service, and that it is technically feasible to improve and expand skywave services by authorizing higher power, WJR and WGN contend (Br. 24-30) that higher power is the only solution consistent with Sections 307(b) and 303(f) of the Communications Act, 47 U.S.C. 307(b) and 303(f), and that the rule amendments are accordingly violative of these sections. They further urge (Br. 30-36) that the Commission's present inability to make a finding that higher power would serve the public interest is unwarranted in view of the admitted engineering advantages of higher power. Both arguments rest on the fallocious assumption that technical feasibility comprises the totality of the public interest and on appellant-petitioners' failure to recognize the legitimacy of the Commission's concern with the social and economic implications of higher power.

The Commission is properly concerned as to whether permitting a few radio stations to serve vast areas and populations is compatible with the principle that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public". Associated Press v. United States, 326 U.S. 1, 20. It has repeatedly sought to avoid monopoly situations in broadcasting and to achieve diversification of control over the disseminating sources; to this end, the Commission has promulgated its multiple ownership rules and accorded weight to the diversification factor in comparative proceedings. United States v. Storer Broadcasting Co., 351 U.S. 192.

While the Commission is not an antitrust enforcement agency, it validly considers federal antitrust policy in connection with the public interest standard of the Communications Act, United States v. Radio Corp. of America, 358 U.S. 334, 351; National Broadcasting Co. v. Federal Communications Commission, 319 U.S. 190, 223-224. Moreover, one of the continuing objectives of the Commission in allocating radio frequencies has been to provide service of local origin to as many communities as possible (R. 4086, par. 2). A high power station could not possibly fill the needs of its vast skywave service area for broadcast material of local significance, such as local news, local weather, and local public affairs. The weight to be attached to the factors of diversification and local service is clearly a matter for the Commission's discretion. Pinellas Broadcasting Co. v. Federal Communications Commission, 97 U.S. App. D.C. 236, 238, 230 F.2d 204, 206, cert. den. 350 U.S. 1007; McClatchy Broadcasting Co. v. Federal Communications Commission, 99 U.S. App. D.C. 195, 198, 239 F.2d 15, 18, cert. den. sub nom. Sacramento Telecasters, Inc. v. McClatchy Broadcasting Co., 353 U.S. 918.

The Commission was equally justified in questioning the economic desirability of allowing a few stations to achieve competitive pre-eminence over all other standard broadcast stations.[13/] As the Commission pointed out (R. 4094, par. 20), some parties throughout the long history of the clear channel proceeding have forcefully urged strenuous objection against the use of higher power on this ground (R. 3752-3753, 3763-3767). The question of whether the competitive pre-eminence of the high power stations would cause a loss or deterioration of

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[13/] The proponents of higher power were seeking higher power during daytime hours as well as at night, thus raising a question as to whether the present daytime allocation structure would be adversely affected.

service to the public by other stations, is obviously proper for consideration by the Commission in determining the over-all public interest. Economic injury to existing stations, "while not in and of itself a matter of moment, becomes important when on the facts it spells diminution or destruction of service" and where "competitive effects * * * produce detriment to the public interest", the "public interest controls". Carroll Broadcasting Co. v. Federal Communications Commission, 103 U.S. App. D.C. 346, 349-350, 258 F. 2d 440, 443-444; Federal Communications Commission v. Sanders Bros. Radio Station, 309 U.S. 470, 475-476.

The suggestion of WJR and WGN (Br. 31) that the Commission's refusal to amend Section 3.21(a)(1) of the rules at this time is attributable to the 1938 Senate resolution against higher power, is unfounded. The Commission made clear that its inability to find higher power in the public interest without further study is based on its own judgment that the social and economic objections against higher power have not yet been satisfactorily met (R. 4926-4929, pars. 9-16). To date there has been no joint action on the matter by both Houses of Congress. The 1962 House resolution does not have the force of law, and would not in any event require authorization of higher power on any of the clear channel frequencies unless the Commission "after consideration of all pertinent factors * * * finds that operation on such frequencies with power in excess of fifty kilowatts will serve the public interest, convenience, or necessity" (H.R. Res. 714, 87th Cong., 2d Sess.). F.H.E. Oil Co. v. Commissioner of Internal Revenue, 150 F.2d 857, 858 (C.A.5).

It was manifestly proper, therefore, for the Commission to decline to amend Section 3.21(a)(1) of its rules until its justifiable doubts about the undesirable aspects of higher power had been removed. Cf. Philco Corp. v. Federal Communications Commission, 110 U.S. App. D.C. 387, 391, 293 F.2d 864, 868; Federal Broadcasting System v. Federal Communications Commission, 96 U.S. App. D.C. 260, 265, 225 F.2d 560, 564, 565, cert. den. sub nom. WHEC, Inc. v. Federal Broadcasting System, 350 U.S. 923; Clarksburg Publishing Co. v. Federal Communications Commission, 96 U.S. App. D.C. 211, 225 F.2d 511. And, in light of the Commission's present inability to make the statutorily required public interest finding with respect to higher power, the rule amendments adopted in Docket No. 6741 are entirely consistent with Sections 307(b) and 303(f) of the Act.

Duplication will provide a first nighttime primary service to an estimated 600,000 persons in the West where there are fewer skywave services available. This service is more desirable than skywave service, both because it is more reliable and also because it is of local origin. While the rule amendments will not supply primary service to white areas east of the Mississippi, where "the largest number of white area residents live" (App.-pet. Br. 26), many more skywave services are available in the East.[14] The number of persons receiving service is not the sole criterion in determining how the public interest is best served. Cf. Television Corporation of Michigan, Inc. v. Federal Communications Commission, 111 U.S. App. D.C. 101, 104, 294 F.2d 730, 733. Clearly, the provision of a first nighttime primary service to a sizeable number of persons accords with Section 307(b) of the Act. Radio Cincinnati, Inc. v. Federal Communications Commission, 85 U.S. App. D.C. 292, 295, 177 F.2d 92, 95. That section does not require the all-or-nothing approach of WJR and WGN. It is sufficient that the purposes of Section 307(b) are furthered by the Commission's decision to alleviate existing inequities to the extent presently practicable.

While some existing skywave service will be lost, the amended rules preserve the capacity of the I-A stations to provide a usuable signal over wide primary and secondary service areas. By locating the new assignments at least 1250 miles from the I-A stations and by protecting the existing stations against co-channel interference to their nighttime 0.5 mv/m

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[14] The provision of additional primary service in the East would have required duplication of the few I-A channels used by Western clear channel stations. The Commission determined that the public interest would be better served by reserving the Western I-A channels to permit a future improvement in skywave services in this area which suffers from a shortage of both primary and secondary service (R. 4038, par. 30).

50 percent skywave contour, the Commission has assured these I-A stations a nighttime service range of about 700 miles, which is approximately the extent of their present useful skywave service (R. 1799, 4092-4093, par. 16). The Commission found that such fringe skywave service as might be lost would be of a low order and would occur in areas where there were other skywave services (R. 4092-4093, par. 16). Moreover, it concluded that the minor loss of this fringe skywave service was outweighed by the gains in needed new primary service and by the desirability of continuing two needed existing services (R. 4091, 4096, 4114, pars. 13, 24, 78). Thus, the amended rules comport with the authority conferred upon the Commission by Section 303(f) to make "such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act" (47 U.S.C. 303(f)).

Although no improvement or extension of skywave service will be achieved, the reservation of 12 I-A channels in status quo preserves the possibility of a future improvement of this nature. In the Commission's judgment (R. 4097, par. 27, 4929, par. 16), the channels selected for reservation are sufficient to make available a total of at least four skywave signals to practically the entire United States.[15/] As pointed out in the

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[15/] WJR and WGN assert (Br. 41-42) that there is no record evidence to support this conclusion. However in a rulemaking proceeding the Commission may evaluate the comments filed by interested persons in the light of the expert judgment and studies of its own engineers. Indeed, the Clear Channel Broadcasting Service, of which WJR and WGN are members, conceded (cont'd)

Counterstatement, five of the reserved channels are located in places where they could provide skywave service to the West (R. 4098, par. 30), and four could provide skywave service to the underserved Southeast (R. 4098, par. 32). The Midwest and Northeast already have a multiplicity of skywave services.[16/] Moreover, if the reserved channels should turn out to be insufficient in the event that higher power is ultimately authorized, any shortage would not be irremediable. Pursuant to its continuing authority under Section 303 of the Act to amend the rules as public interest requires, the Commission could undo any or all of the present duplications or effect some geographical redistribution of I-A stations.

Nor is national defense preparedness in any way impaired by the Commission's action, as WJR and WGN claim (Br. 36-38). By reason of the protection accorded to the service contours of the existing clear channel stations on the duplicated frequencies, almost all persons presently receiving useful service from such stations will continue to do so and, although the number of skywave services is concededly not adequate in some

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15/ (cont'd) before the Commission that: "If need be, the Commission is free to avail itself of any additional information contained in its files" (R. 1446).

[16/] Intervenor Westinghouse Broadcasting Company, Inc. argues that the Commission should not have permitted duplication of 1030 kc, because Boston Station WBZ is the only clear channel station in New England, one of the Eastern areas receiving inadequate primary service. However, the 700 mile skywave contour of WBZ under the amended rules is extensive enough to serve all of New England. Moreover, New England is within the skywave service area of the several other I-A stations located in the Northeast.

areas, at least one such service is available to practically all persons in the United States. Not only has there been no impairment of available facilities but, in fact, duplication of the 13 clear channels may result in improvement of communications for defense purposes. As the Commission stated in its 1962 Memorandum Opinion and Order (R. 4928, par. 14):

> It is not contemplated that the BRECOM system would depend entirely on the clear channels. In fact, the addition of 50 kw operations by Class II-A stations in the West may well prove to be of some value in such a system. The Commission has worked very closely with the Department of Defense in the BRECOM project, which is still in the experimental and developmental stage. It is, in fact, a joint project of the Federal Communications Commission and the Department of Defense. It is the Commission's informed judgment that the national defense preparedness is not impaired by the clear channel decision now outstanding.

And, finally, the contentions of WGN and WJR (Br. 39—41) that their particular frequencies should not have been selected for duplication, do not show an abuse of discretion on the part of the Commission. Essentially, the argument of WJR and WGN that duplication should not be permitted on 760 kc and 720 kc is but a repetition of their basic contention that higher power should be utilized on the clear channels and that no duplication should be permitted on any clear channel (Br. 27-36). That contention has already been answered. Their further suggestion that the Commission could not properly duplicate any clear channel prior to resolution of the higher power issue, is foreclosed by Federal Communications Commission v. WJR, The Goodwill Station, Inc., 337

U.S. 265, 272, and American Broadcasting-Paramount Theatres, Inc. v. Federal Communications Commission, 108 U.S. App. D.C. 83, 87, 280 F.2d 631, 635. As the Supreme Court pointed out in the WJR case, neither WGN nor WJR has any "vested right in the 'supposititious eventualities' that the Commission at some indeterminate time might modify its rules governing clear channel stations" to authorize higher power (337 U.S. at 272).

Assuming, as WGN contends and as the Commission recognized (R. 4932, par. 28), that its Chicago station on 720 kc could provide improved skywave service with increased power, the fact remains, as the Commission found (R. 4099, par. 37, 4932-4933, par. 28-30) that its potential for improved skywave service to underserved areas is not as great as that of the channels which are being retained in status quo. Because of the necessity to protect adjacent-channel stations in New York, Cuba and Mexico, nighttime radiation to the east and south would be limited (R. 4099, par. 37). Moreover, the potentiality of improving skywave service to the west on 720 kc is not as great as that of six other I-A channels retained in status quo (R. 4933, par. 30). The proposed new assignment, to be located in Nevada or Idaho, will provide nighttime primary service in an underserved area, and will be separated from WGN by a sufficiently great distance to afford protection to the 0.5 mv/m, 50 percent skywave nighttime service area of WGN. Although WGN asserts that the record does not support the Commission's conclusions, it has not shown in what respect the Commission is in error.

WJR's frequency 760 kc, unlike the other frequencies designated for duplication, was assigned to a particular city, San Diego, California. This action was taken because the frequency 540 kc now occupied by station KFMB in that city, must be vacated pursuant to the provisions of the United States - Mexican Broadcasting Agreement and it was necessary to assign another frequency for the use of San Diego. (R. 4114-4115, par. 77-79). The Commission concluded that it was in the public interest that further "use be made of the relatively uncluttered spectrum space still open on the Class I-A clear channels, and that provision be made in this proceeding - which embraces the allocation questions pertaining to all Class I-A frequencies - for a substituted assignment to San Diego" (R. 4114-4115, par. 78).

Had the frequency 760 kc not been used for this purpose, it would have been duplicated in any event in order to provide a first primary service in a white area (R. 4116, par. 81). Moreover, the Commission limited KFMB's nighttime operation on 760 kc to 5 kw power, unlike the Class II-A assignments on the other duplicated channels which will be permitted to use 50 kw power and required to use at least 10 kw power at night (Section 3.22(c) and 3.182(a)(2) of the amended rules (R. 4133, 4137)). Consequently, WJR was prejudiced in no way by the assignment of a Class II station in San Diego, approximately 1,970 miles from Detroit (R. 4374) rather than in Idaho, as proposed in the Third Notice of Further Proposed Rule Making (R. 1801).

The Commission gave careful consideration to the possibilities of assigning KFMB on another frequency.[17] On the basis of its review, the Commission concluded that "760 kc is the preferable choice, taking into account requirements of protection to Mexican stations on other Class I-A channels, the availabilities of some other Class I-A clear channels for new Class II-A stations at other places in the United States, domestic and Canadian co-channel and adjacent-channel limitations on the allocation of individual Class I-A clear channels, and related considerations" (R. 4115, par. 78). It made a complete reappraisal of the use to which this frequency would be put following WJR's petition for reconsideration. (R. 4934-4935, par. 38, 39). As pointed out in the Counterstatement, the use of 830 kc was considered feasible, but for the circumstance that this frequency, upon which WCCO at Minneapolis is the dominant station, is also used during certain nighttime hours by WNYC at New York. The Commission concluded in Docket No. 6741 that no more than one nighttime operation, in addition to the dominant station, should presently be permitted on the I-A frequencies (R. 4101, par. 43).

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[17] In the engineering statement suggesting 1000 kc as a possible alternative to which WJR refers (Br. 41) it was stated that "there appears to be some technical possibilities of operation on 1000 kc, a Class I-B clear channel. The use of a directional antenna would be required to avoid or minimize interference to other stations on 1000 kc and the adjacent channels. . .." (R. 4377). In this connection it should be noted that service areas are reduced as the frequencies become higher and the Commission's objective was to provide a continuation of KFMB's present service area on the lower frequency 540 kc.

The use of 550 kc, although not a clear channel, was also considered and rejected because KFMB would be required to directionalize southward and to the west in order to protect existing co-channel stations on that frequency, and, consequently, much of its signal would be wasted over the Pacific Ocean and much of its existing service area would lose service (R. 4935, par. 39). Under the circumstances, the Commission concluded within its competence that duplication on 760 kc for this purpose was justified and would serve the public interest. American Broadcasting-Paramount Theatres v. Federal Communications Commission, 108 U.S. App. D.C. 83, 87, 280 F.2d 631, 635.

In conclusion, we point again to the Commission's own observations as to the difficult nature of its decisions both with respect to the underlying controversy of higher power versus duplication and also in selecting the best course for individual channels. Concerning the over-all problem, the Commission stated (R. 4125, par. 101):

> Recognition is due to the fact that some merit attaches to very many of the proposals which have been urged upon us, including some of those which we herein reject. Our essential task in this proceeding has been to select among the myriad solutions offered those which, on net balance, taking into account the many

> pertinent considerations, would best serve the public interest. The opposed factors bearing upon our judgments in some instances are closely balanced. While recognizing that much can be said for numerous alternative approaches, we now conclude that the course laid out herein, both as reflected in the rule changes now adopted and in the preservation for the time being of the status quo on 12 Class I-A clear channels, represents the best solution available at this time.

Concerning its decisions on individual channels, the Commission stated (R. 4929, par. 17):

> A few channels, whether because of technical or international considerations or for policy reasons, clearly fall within the duplicated or the reserved group as set forth in our basic decision. Some others, while engineering considerations might not point unmistakeably to a clear-cut decision that they fall within a particular one of the two categories, have a preponderance of reasons why one solution is to be preferred over the other. In the case of a few, while higher power might be technically feasible, the area they would serve with a secondary service at higher power is otherwise provided for either by present operations or by possible operations at higher power on the reserved frequencies. In a very few cases the choice appears rather difficult when considering the channel on an individual basis. However, applying the general guidelines mentioned at paragraph 26 of the Report and Order of September, 1961, and considering how the two basic objectives are met by the combination of frequencies contained within each group, we are convinced that the decisions, while not easy, are sound.

We submit that WJR and WGN have not shown the Commission's considered judgments on either score to be arbitrary or unlawful.

II. THE COMMISSION'S ORDERS AMENDING THE CLEAR CHANNEL RULES DID NOT DEPRIVE WJR AND WGN OF STATUTORY HEARING RIGHTS

WJR and WGN concede (Br. 24-25) that the Commission's consideration of possible amendments to the clear channel rules was validly undertaken in a rule making proceeding, in which they were heard (Br. 11-14), but contend that as "existing and long-time licensees of the Commission" they were entitled to a further adjudicatory hearing before the rules could be amended to duplicate their frequencies. Claiming that the decreased protection against nighttime co-channel interference in the amended rules constitutes a modification of license, WJR and WGN argue that the Commission has unlawfully deprived them of hearing rights afforded by Sections 316, 303(f) and 309(e) of the Communications Act, 47 U.S.C. 316, 303 (f) and 309 (e). As shown below, these arguments are foreclosed by the Court's decision in Transcontinent Television Corporation v. Federal Communications Commission, 113 U.S. App. D.C. 384, 308 F.2d 339, since the rule amendments adopted in Docket No. 6741 were not to take effect until after the expiration of all licenses issued to WJR and WGN under the old rules, and their current licenses were taken subject to the new rules.

The Commission's authority to utilize rule making procedures to amend the clear channel rules to permit authorization of a full-time Class II-A station on 13 I-A frequencies, including the frequencies 720 kc and 760 kc, is not affected by the circumstance that WJR and WGN have previously held licenses entitling them to exclusive use of their frequencies at night. The Communications Act does not afford licensees any protection against interference as a matter of statutory right. Such protection as WJR and WGN enjoyed stemmed solely from the Commission's rules, which were incorporated in the terms of their licenses. Federal Communications Commission v. National Broadcasting Co. (KOA), 319 U.S. 239, 245. The continued availability of this protection, under the scheme of the Act as a whole, was subject to action of the Commission in a rule making proceeding. Transcontinent Television Corporation v. Federal Communications Commission, 113 U.S. App. D.C. 384, 389, 308 F.2d 339, 344.

Contrary to the contention of WJR and WGN (Br. 42-49), the Commission's order amending the rules to permit authorization of another full time station on the frequencies 720 kc and 760 kc, did not effect a modification of their licenses within the meaning of the KOA case or improperly deprive them of statutory hearing rights. The licenses of WJR and WGN which incorporated the old rules had expired before the new rules became effective; WJR's on October 1, 1961 and WGN's on December 1, 1961. The Commission's order provided that the rule amendments would not become effective until October 30, 1961 and that no Class II-A station would be authorized on the frequencies to be duplicated prior to January 30, 1962 (R. 4126, 4130). Thus, both WJR and WGN enjoyed exclusive nighttime use of their frequencies throughout the stated terms of the licenses issued to them under the old rules.[18/]

Rule amendments which are not to be effective during the term of a license do not modify the license within the meaning of Section 316(a) of the Communications Act; nor do they necessitate a "public hearing" under the provisions of Section 303(f) of the Act.[19/] Transcontinent Television Corporation v. Federal Communications Commission, 113 U.S. App. D.C. 384, 388, 308 F.2d 339, 343. As the Court there held, Section 316 (a) has "reference to a modification which interferes with the rights of a licensee during the term of its license" (113 U.S. App. D.C. at 388,

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[18/] WGN does not claim to be in a different position than WJR or base its contention of modification of license on the period between October 30, 1961 and December 1, 1961. In any event, even if there was a technical modification of WGN's license during the last month of its term, WGN suffered no prejudice. The amended rules did not permit authorization of a Class II-A station on 720 kc until January 30, 1962, after the expiration date of WGN's license.

[19/] The hearing provision in Section 303(f) would appear to have no pertinence to this case since it applies only to rules which make "changes in the frequencies, authorized power, or in the times of operation of any station." Petitioners claim an indirect modification of license by reason of interference within the meaning of the KOA case, which involved only Section 316 (then Section 312) of the Communications Act. Federal Communications Commission v. National Broadcasting Company (KOA), 319 U.S. 239, 245, 247.

308 F.2d at 343). And Section 303(f), in barring changes in the frequencies, authorized power, or in the times of operation of any station without the consent of the station licensee or a public hearing, does not bar such changes by rule making if the changes are not to be effective during the term of the license (113 U.S. App. D.C. at 388, 308 F.2d at 343).

The current licenses of WJR and WGN were taken under the amended rules and incorporate only the protection afforded by such rules. Functional Music, Inc. v. Federal Communications Commission, 107 U.S. App. D.C. 34, 38, 274 F.2d 543, 547, cert. den. 361 U.S. 813. WGN's application for renewal of license was granted on January 3, 1962, after the new rules had become effective. The renewal of license granted WJR on October 4, 1961, after promulgation of the new rules but before their effective date, contained a condition that "operation under this renewal is subject to whatever interference is caused to Station WJR, outside of its 0.5 mv/m 50 percent skywave contour, by a co-channel unlimited time Class II station assigned to San Diego, California, pursuant to Report and Order in Docket 6741" (R. 5032). The conditional grant did not prejudice WJR or infringe any hearing rights since the same result would have automatically obtained if the Commission had merely deferred action on the renewal application until October 30, 1961, the effective date of the new rules.[20]

The Transcontinent case is dispositive of petitioners' contention (Br. 44-47) that the intervening rule changes improperly cut-off their right to apply for renewal of the licenses incorporating the old rules, to have a hearing thereon under Section 309(e) of the Communications Act, and to obtain an automatic extension pending disposition of such a renewal application pursuant to Section 307(d) of the Communications Act and Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 1008(b). The "holdover provisions" have the "purpose of permitting continuity of operation while a renewal application is being processed, but this assumes the continued availability" of the frequency for the purpose sought by the applicants under the rules governing the license period for which application is made. Transcontinent Television Corporation, supra, 113 U.S. App. D.C. at 388-389, 308 F.2d at 343-344.[21] Section 309(e) does not require an evidentiary hearing on a renewal application alleging indirect modification where the modification has been accomplished by a valid rule change effective at the expiration of the previous license term. Ibid. See also United States v. Storer Broadcasting Co., 351 U.S. 192, 202-205; Bendix Aviation Corp. v. Federal Communications Commission, 106 U.S. App. D.C. 304, 307-308, 272 F.2d 533, 536-537, cert. den. sub nom. Aeronautical Radio, Inc. v. United States, 361 U.S. 965.[22]

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[20] Although WJR complained about the conditional grant of its renewal application in its petition for reconsideration in the rulemaking proceeding, it did not file a written objection in the licensing proceeding pursuant to the provisions of Section 1.64 of the Commission's Rules, 47 CFR 1.64. Moreover, even if the Commission had vacated the renewal grant, WJR's right to a hearing under that section would have become moot on October 30, 1961 when the new rules became effective. WJR's status would then have been that of an applicant, and, as shown infra, an applicant has no right to an evidentiary hearing on changes in the substantive rules governing consideration of the application or to an evidentiary hearing on an application in conflict with the applicable rules.

[21] Since the amended rules precluded authorization (cont'd)

The attempt of WJR and WGN to distinguish the Transcontinent case on the ground that the rules here were not amended until after their renewal applications were filed, lacks merit. An application is governed by the rules in effect for the period for which application is made, and

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21/ (cont'd) of any Class II station prior to January 30, 1962, both WJR and WGN did in fact enjoy exclusive nighttime use of their frequencies while their renewal applications were being processed.

22/ While a waiver of the rule may be sought if particular facts or later changing circumstances warrant, a request for waiver does not per se require a hearing. Having just decided in the rule making proceeding that the public interest required duplication of the frequencies 720 kc and 760 kc, the Commission should not be required to cover the same ground again in an adjudicatory proceeding. Transcontinent Television Corporation, supra, 113 U.S. App. D.C. at 388, 308 F.2d at 343; Gerico Investment Co. v. Federal Communications Commission, 103 U.S. App. D. C. 141, 143, 255 F.2d 893, 895.

not those in effect on the date of filing. See Paramount Television Productions, Inc., 8 Pike & Fischer, R.R. 459, 462. The Commission is charged with the duty of judging the application in the light of the public interest existing at the time it acts. Federal Communications Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 145. The mere filing of an application does not afford the applicant an immunity from changes in the rules by appropriate rule making procedures or confer any right to an evidentiary hearing on the rule changes. Owensboro on the Air, Inc. v. United States, 104 U.S. App. D.C. 391, 262 F.2d 702, cert. den. 360 U.S. 911; WIRL Television Company v. United States, 102 U.S. App. D.C. 341, 344, 253 F.2d 863, 866, certiorari granted and remanded on other grounds, 358 U.S. 51.

Equally without merit is the further assertion of WJR and WGN (Br. 47-48) that the Transcontinent case is significantly distinguishable because it allegedly involved a specific rule making proposal to reallocate one television channel and affected only one licensee,[23] whereas the rule making proceeding here was a "general, industry-wide investigation affecting numerous existing licensees". The use of rule making procedures to effect the nationwide frequency allocations involved in this case is obviously even more appropriate in view of the interrelationship of the numerous rule amendments and the necessity of affording large numbers of interested persons an opportunity to be heard.'

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[23] As pointed out in the Government's brief in the Transcontinent case (pp. 60-63), the rule making there actually concerned a regional question, involving several channel changes and affecting a number of licensees and hundreds of interested persons.

Notwithstanding their contrary contention (Br. 44, 48), WJR and WGN were afforded adequate notice of the nature of the rule changes affecting their frequencies and ample opportunity to be heard. The Third Notice of Proposed Rulemaking, issued on September 22, 1959, proposed to duplicate the frequencies 720 kc and 760 kc by the assignment of an unlimited time Class II station to be located at least 1250 miles distant from the existing Class I station and to operate with not less than 10 kw power (R. 1798-1799). The Notice further proposed that the additional assignments on 720 kc and 760 kc would be in the States of Nevada and Idaho, respectively (R. 1801). WJR and WGN took full advantage of the opportunity extended to make any showing they chose with respect to these proposals. It is conceded (Br. 13) that "WJR, individually and as a member of CCBS [the Clear Channel Broadcasting Service], and WGN, as a member of CCBS, filed comments on April 1, 1960 (R. 2975-85, 3184-3409), and, individually and as members of CCBS, both filed reply comments on June 1, 1960 (R. 3511-21, 3640-53, 3664-3707)", which, inter alia, were directed toward the San Diego counter proposal (R. 3671).

The amended rules duplicated 720 kc in Nevada or Idaho (R. 4133) and duplicated 760 kc at San Diego, California, a deviation which was not prejudicial to WJR (R. 4135). This assignment is more distant than the proposed Idaho location and is restricted to 5 kw power. Moreover, the petitions for reconsideration filed by WJR and WGN (R. 4357-4380, 4381-4409) were directed toward the specific rule amendments. Before reaffirming the rule changes, the Commission re-examined its decision in the light of their contentions and gave reasons for rejecting them (R. 4925, 4932-4933, 4934, 4935, par. 3, 28-30, 38-40). Under the circumstances, and since WJR and WGN do not point to any presentation they were precluded from making, we submit that the procedures followed by the Commission comport with the requirements of Section 4 of the Administrative Procedure Act, 5 U.S.C. 1003, and that WJR and WGN have had sufficient notice and ample opportunity to be heard. Owensboro on the Air, Inc. v. United States, 104 U.S. App. D.C. 391, 397-398, 262 F.2d 702, 707-708 cert. den. 360 U.S. 911.[24/]

[24/] While WJR and WGN cannot validly claim a modification of license or deprivation of statutory hearing rights flowing from the rule amendments, Section 309(d)(1) of the Act would afford them an avenue for challenging any application filed pursuant to the amended rules. For instance, they might properly contend that any such application did not comply with the provisions of the amended rules or was otherwise contrary to the public interest on grounds not considered in Docket No. 6741. However, as the Commission stated (R. 4925, par. 2), the determination of any further hearing rights must await concrete proposals for the new stations and the narrowing of issues on consideration of such applications.

III. THE COMMISSION'S ORDER RETURNING THE APPLICATIONS OF WJR AND WGN FOR POWER IN EXCESS OF THE MAXIMUM PERMITTED BY SECTION 3.21(a)(1) OF THE RULES, AND DENYING A WAIVER OF THE RULE, WAS VALID AND PROPER

The Commission's order returning the applications of WJR and WGN for authority to operate at 750 kw power and denying their requests for waiver of Section 3.21(a)(1) of the rules, which limits maximum power to 50 kw, was valid and proper. Section 309(e) of the Communications Act, 47 U.S.C. 309(e), does not require a hearing on an application in admitted conflict with the Commission's rules. *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 202; *Logansport Broadcasting Corp*. v. *United States*, 93 U.S. App. D. C. 342, 344, 210 F.2d 24, 26; *Bendix Aviation Corp*. v. *Federal Communications Commission*, 106 U.S. App. D.C. 304, 308, 272 F.2d 533, 537, *cert*. *den*. *sub* *nom*. *Aeronautical Radio, Inc*. v. United States, 361 U.S. 965; *Transcontinent Television Corporation* v. *Federal Communications Commission*, 113 U.S. App. D.C. 384, 389, 308 F.2d 339, 344. Nor does the Act require a hearing with respect to every request for waiver of the rules. *United States* v. *Storer Broadcasting Co*., *supra*, 351 U.S. at 205.

The Commission reasonably determined that the waiver requests of WJR and WGN did not state a valid basis for hearing. In effect, they merely sought reconsideration of the Commission's decision in Docket No. 6741 and the grounds asserted were those advanced and rejected in that proceeding. Having just considered and decided the higher power issue in the rule making proceeding, the Commission was not required to cover the same ground again in an adjudicatory proceeding. Transcontinent Television Corporation v. Federal Communications Commission, 113 U.S. App. D.C. 384, 388, 308 F.2d 339, 343; Gerico Investment Co. v. Federal Communications Commission, 103 U.S. App. D. C. 141, 143, 255 F.2d 893, 895; Pittsburgh Radio Supply House v. Federal Communications Commission, 69 App. D. C. 22, 25, 98 F.2d 303, 306.

While the Commission indicated in Docket No. 6741 that further study of the higher power proposal was warranted, the frequencies of WJR and WGN were not among those reserved in status quo for future consideration of higher power. Their frequencies were to be duplicated, and the Commission had decided that its further study of the best use for the reserved channels should await an opportunity to evaluate such improvements and changes in services as might result from duplication (R. 4094, par. 20, 21). Moreover, even with respect to the reserved frequencies, the Commission stated that it would entertain a petition for rulemaking rather than an application inconsistent with the present rule (R. 4928, par. 12).

The Commission's conclusion that the rule making procedure is the appropriate vehicle for its further study of higher power, rests on reasonable grounds. As the Commission pointed out (R. 5072), "orderly procedure would seem to require that the merits of authorizing use of power in excess of 50 kw be evaluated in a rule-making procedure previous to firm commitment to that course of action, and that the rules be amended to spell out the conditions and circumstances under which such operation may be authorized in the public interest if it is determined that such a course will serve this interest." Obviously, a controversial matter of this nature, in which numerous persons have long expressed such strong interest and which involves important issues of social and economic policy, should not be decided by adjudicatory procedures in a proceeding limited to two applicants.

CONCLUSION

For the foregoing reasons, the Commission's orders should be affirmed. The United States, respondent in Case No.17,500, respectfully requests affirmance of such orders as are reviewable in that case.

Respectfully submitted,

LEE LOEVINGER,
Assistant Attorney General

LIONEL KESTENBAUM,
PATRICK M. RYAN
Attorneys
Department of Justice

MAX D. PAGLIN,
General Counsel

DANIEL R. OHLBAUM,
Associate General Counsel

RUTH V. REEL,
Counsel

HERMAN I. BRANSE,
Counsel

Federal Communications Commission
Washington 25, D. C.

April 29, 1963

REPLY BRIEF FOR APPELLANTS-PETITIONERS

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 17,498; 17,499; 17,500

THE GOODWILL STATIONS, INC., and WGN, INC.,
Appellants-Petitioners

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee-Respondent

and

UNITED STATES OF AMERICA, *Respondent*
AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.
MIDWEST RADIO-TELEVISION, INC.,
WESTINGHOUSE BROADCASTING CO., INC., ET AL.,
Intervenors

Appeals from and Joint Petition to Review and Set Aside Orders of the Federal Communications Commission

REED T. ROLLO
KELLEY E. GRIFFITH
R. RUSSELL EAGAN
800 World Center Building
Washington 6, D. C.
Attorneys for
Appellants-Petitioners

May 13, 1963

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Appeals from and Joint Petition to Review and Set Aside Orders of the Federal Communications Commission

REPLY BRIEF FOR APPELLANTS-PETITIONERS

I. THE ANOMALY OF THE COMMISSION'S ORDERS IS UNRESOLVED

Nothing in the Commission's brief dispels the basic infirmity of its challenged orders, which stands out more clearly than before.

The Commission acknowledges that as a result of existing "deficiencies in the standard broadcast allocation structure" "about half of the total land area of the United States, containing approximately 25,000,000 people, lacks nighttime primary service." (Br. pp. 7, 31) The Commission concedes that these "white" areas are dependent upon the secondary or skywave service of Clear Channel stations for their *only* nighttime radio service, which is presently inadequate, and that "any significant improvement" of nighttime service to "underserved areas of the country can only be provided on the clear channel frequencies." (Br. pp. 5, 7, 8, 32, 33, 34)[1]

By reason of the Commission's orders, however, no new skywave service will be created (Br. pp. 12, 40), existing skywave service will be degraded rather than improved (Br. pp. 14, 32, 39, 40), and a first nighttime primary service will be afforded to only an estimated 600,000 persons. (Br. p. 38) The Commission itself characterizes this "improvement" in nighttime service to "white" areas as "limited added nighttime primary service" (Br. p. 22); "some additional primary service" (Br. p. 32); and "a comparatively small increment in primary service." (Br. p. 34)

At the same time, the Commission concedes, as it must in view of the record, that it is "technically feasible by use of higher power to accomplish a substantial extension and improvement of existing skywave services." (Br. pp. 32, 34)

In view of the above-noted facts, it would seem inescapable that the Commission has defaulted its statutory obligation "to provide a fair, efficient, and equitable distribution of radio service," unless it can point to countervailing considerations that justify a result otherwise at odds with the record. For as this Court recently reiterated, "The Commission is required to consider 'not only the public benefit from the operation of the new station[s], *but also any public loss which it might occasion. Only by such a balancing can the Commission reach a legally valid conclusion on the ultimate question of the public interest.*' " *Interstate Broadcasting Co.* v. *FCC,* No. 17070, D.C. Cir., April 30, 1963, Slip Op. at 9 (emphasis added).

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[1] See also the Commission's April 15, 1958 Notice of Proposed Rule Making (R. 1-29): "improvement of nighttime service throughout most of the existing white areas must be provided, if at all, by new or improved skywave service." (Par. 41)

In an attempt to justify its orders, the Commission takes the position that there *are* countervailing "social and economic implications." (Br. pp. 33, 35, 37)

The "social" implications seem to consist of the argument that higher power is incompatible with the principle that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." (Br. p. 35) This argument, in the context of this case, misses the mark entirely. The Commission admits that its orders will bring a first nighttime radio service to fewer people than would higher power for Clear Channel stations. How can this possibly further "the widest possible dissemination of information from diverse and antagonistic sources." Indeed, the exact opposite is true.

The "economic" implications seem to consist of the argument that the maintenance of the unduplicated status of the Clear Channel frequencies and the enhancement of their potential service by increased power would permit "a few radio stations to serve vast areas and populations" and thereby allow "a few stations to achieve competitive preeminence over all other broadcast stations." (Br. pp. 35-36) To begin with, this argument is defective because there is no probative evidence of record supporting the conclusion and the Commission's orders contain no supporting findings of fact. Even assuming, *arguendo,* the validity of the conclusion, the argument is a *non-sequitur.* It plainly defies reason to conclude that the over 25 million people now receiving inadequate radio service should be denied new and improved service because of possible competitive advantages that might accrue to Clear Channel stations operating with higher power. Any such advantages would be incidental to the implementation of the mandate of Section 307(b) of the Act. Moreover, such possible advantages are not and cannot be a controlling aspect of the Commission's public interest determination if the result is, as here, that millions of people will be denied the radio service to which the Communications Act says they are entitled. Nonetheless, the Commission insists that, by duplicating the Clear Channel frequencies and denying higher power in order to deprive the Clear Channel stations of a so-called competitive pre-eminence, it is exercising its power to further the public interest. Surely, this is to burn the house to roast the pig.

In short, we have legislation that commands "a fair, efficient, and equitable distribution of radio service." We also have orders which are supposedly designed to implement that mandate, but which instead are based on "social and economic" considerations whose furtherance can be significant only if it aids in the attainment of the primary objective of the Act—"a fair, efficient, and equitable distribution of radio service."

In these circumstances then, the Commission has misconceived its function by debasing the objective of adequate radio service to a numbers game which boasts more stations, 11 to be exact, doing an admittedly inadequate job. As we have shown elsewhere (Main Br. pp. 34-36), in directing an equitable distribution of radio service throughout the United States, Congress did not incorporate the general policies of the antitrust laws as the measure of the adequacy of the distribution of radio service. Since the Commission has done precisely that, its orders must fall. For when a reviewing court is

> dealing with a determination or judgment which an administrative agency is authorized to make, [it] must

> judge the propriety of such action solely by the grounds invoked by the agency. If these grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis. To do so would propel the court into the domain which Congress has set aside exclusively for the administrative agency. *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 196 (1947).[2]

Moreover, the Commission cannot bolster its orders simply by alluding to the "difficult" technical considerations that went into its decision and the "painstaking care" with which it evaluated the record. (Br. pp. 17, 19, 20, 24) Nor can theorizing about a "judicious combination of the possible advantages of the two approaches to reap some of the benefits of each" (Br. p. 33) obscure the basic flaw in the Commission's orders. As this Court has said, while "administrative expertise is to be respected, especially in so technical a field as this," courts cannot "blind" themselves to the plain error of an "inherently inconsistent" administrative decision. *W. S. Butterfield Theatres, Inc.* v. *FCC*, 99 App. D.C. 71, 76, 237 F. 2d 552, 557 (1956); *Hall* v. *FCC*, 99 App. D.C. 86, 93-94, 237 F. 2d 567, 574-75 (1956). See also *Eastern-Central Motor Carriers Ass'n* v. *United States*, 321 U.S. 194 (1944). Certainly no one would quarrel with the desirability of balancing conflicting interests. But as the record shows, nothing has been placed on either end of the scale beam to guarantee an equitable distribution of radio service, while the fear of undocumented "social and economic" implications has been allowed to outweigh everything else. As the Supreme Court has said, "Legal theory is one thing. But practicalities are different." *Ashbacker Radio Corp.* v. *FCC*,

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[2] See also *Functional Music, Inc.* v. *FCC*, 107 App. D.C. 34, 274 F. 2d 543 (1958), *cert. denied*, 361 U.S. 813 (1959); *Democrat Printing Co.* v. *FCC*, 91 App. D.C. 72, 202 F. 2d 298 (1952); *National Labor Relations Board* v. *Capital Transit Co.*, 95 App. D.C. 310, 221 F. 2d 864 (1955); *Mississippi River Fuel Corp.* v. *Federal Power Commission*, 82 App. D.C. 208, 163 F. 2d 433 (1947).

326 U.S. 327, 332 (1945). So here, the Commission's theory is one thing. But the practicalities of its orders are different. What the Commission has actually done is to dismantle the Clear Channel concept without promulgating any substitute to ensure improved nighttime radio service for the large underserved areas of the United States.

This defect in the Commission's orders is not cured by the suggestion that the "reservation" of twelve Clear Channel frequencies for future consideration for higher power is "sufficient to make available a total of at least four skywave signals to practically the entire United States." (Br. p. 40) This conclusion is admittedly not based on record evidence or findings of fact, but is bottomed solely on "the Commission's judgment." (*Ibid.*) Here, as in *Interstate Broadcasting Co.* v. *FCC,* No. 17070, D.C. Cir., April 30, 1963, the Commission's conclusions "are by no means self-evident, and in neither case did the Commission explain them or support them with more specific findings." Slip. Op. at 8.

Among the unanswered questions implicit in the Commission's so-called "judgment" are the following:

1. Which of the 12 "reserved" Clear Channel stations must operate with higher power in order to provide at least four adequate skywave signals to practically the entire United States?

2. How many of the 12 "reserved" Clear Channel stations would apply for higher power if authorized to do so?

3. How is the potential of the "reserved" 660 kc frequency, which has a Class I-A station in New York and a fulltime Class II station in Alaska, any different than that of the "duplicated" 750 kc frequency, which has a Class I-A station in Atlanta and to which has been assigned a fulltime Class II station in Alaska?

4. How is the potential of the "reserved" 770 kc frequency, which has a Class I-A station in New York and a fulltime Class II station in Albuquerque, any different than

that of the "duplicated" frequencies of 720 kc (WGN) and 760 kc (WJR)?

5. What is the basis for the implied conclusion (Br. p. 41) that the skywave services now provided to the Midwest and the Northeast are adequate in terms of signal strength?

The Commission indeed admits that the 12 "reserved" Clear Channel frequencies may be insufficient to improve service to the extent needed but attempts to dismiss the matter with the unrealistic statement that the Commission "could undo any or all of the present duplications or effect some geographical redistribution of I-A stations." (Br. p. 41) Regarding the latter, the Commission concluded in par. 43 of its April 15, 1958 Notice (R. 1-29) that the record failed "to support the desirability of outright relocation of Clear Channel stations." Regarding the former, the record is clear that the Commission has never been able to undo any of the 15 duplications of the original 40 Clear Channel frequencies, which occurred between 1929 and 1941.[3]

The overriding defect of the Commission's orders is their failure to improve service where needed. As the record shows, this can be achieved only by resolving first the question of how many of the existing Class I-A stations should be authorized to operate with higher power and then resolving the question of the extent to which, if any, Class I-A frequencies should be duplicated.

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[3] Among the tragic 15 duplications, which have not been undone, are the duplications of Clear Channel stations located in the Western states of California (KGO and KPO, San Francisco and KNX, Los Angeles); Washington (KOMO, Seattle); Oregon (KEX, Portland); and Colorado (KOA, Denver).

II. CONTRARY TO THE COMMISSION'S READING OF TRANSCONTINENT TELEVISION CORP. v. FCC, THE RATIONALE OF THAT DECISION CONFIRMS THE ILLEGALITY OF THE COMMISSION'S MODIFICATION WITHOUT A HEARING OF THE LICENSES OF WJR AND WGN

The Commission defends its modification of the licenses of WJR and WGN without a hearing by reference to this Court's recent decision in *Transcontinent Television Corp.* v. *FCC,* 113 App. D.C. 384, 308 F. 2d 339 (1962). According to the Commission, that case is "dispositive" of appellant-petitioners' contention in the case at bar. (Br. pp. 48, 52)

However, the *Transcontinent* case held only that the Commission may modify a license by rule making where (1) the licensee is given specific notice of the proposed modification and an opportunity to be heard thereon, (2) the licensee does not have pending a timely filed renewal application, and (3) the modification is not made effective during the term of the outstanding license. Unlike the licensee in *Transcontinent,* WJR and WGN had timely filed renewal applications for authority to operate on their assigned Clear Channel frequencies before the Commission's rule making became effective. Accordingly, the respective frequencies were available for the very purposes set forth in the applications when filed. Thus, the *Bendix* case, 106 App. D.C. 304, 272 F. 2d 533 (1959), can have no application *here* since the frequencies *there* were "no longer available for any such purpose as was disclosed by the * * * application."[4]

As detailed in our main brief (pp. 42-49), with the filing of their renewal applications WJR and WGN acquired the rights set forth in Section 9(b) of the Administrative Procedure Act and Section 307(d) of the Communications Act. Both of these statutory provisions provide that, upon the timely filing of renewal applications, the then existing licenses shall continue in effect until the applications shall have been finally determined by the agency. In considering the effect of these holdover provisions, this Court explained in *Transcontinent,* 113 App. D.C. at 389, 308 F. 2d at 344,

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[4] In addition, neither WGN nor WJR had specific notice of the proposed modifications and there was no weighing of the specific gains and losses in service that would result. See *Interstate Broadcasting Co.* v. *FCC,* No. 17070, D.C. Cir., April 30, 1963, Slip Op. at 9.

> The holdover provisions, in other words, have the purpose of permitting continuity of operation while a renewal application is being processed, *but this assumes the continued availability of the Channel.* (emphasis added)

Since on the facts of the case at bar the frequencies for which WJR and WGN filed renewal applications *were* available at the time these applications were filed, the applicants were entitled to their full statutory rights, which encompass a hearing of the type contemplated by Sections 309(e) and 316 of the Communications Act. This critical distinction between the case at bar and the *Transcontinent* case refutes the Commission's entire argument respecting the violation of WJR and WGN's statutory rights to a hearing on the modifications of their licenses proposed by the Commission.[5]

III. THE COMMISSION HAS NOT MET THE DEMONSTRATION THAT ITS REFUSAL TO ACCEPT FOR FILING THE WJR AND WGN APPLICATIONS FOR POWER OF 750 kw VIOLATED SECTION 309(e) OF THE COMMUNICATIONS ACT

The Commission's brief does not controvert the fact that WJR and WGN alleged reasons, sufficient if true, to justify a waiver of the pertinent rules and were, therefore, entitled to a hearing on their applications for power of 750 kw. (See, most recently, *Interstate Broadcasting Co.* v. *FCC,* No. 17070, D.C. Cir., April 30, 1963, Slip. Op. at 8-9, which confirms the entitlement of WJR and WGN to a hearing.) Instead, the Commission relies upon the purported existence of a rule of convenience under which it can refuse to grant a hearing if it prefers to have the issues presented considered in a rule making rather than adjudicatory hearing. The authorities cited do not support this extraordinary view. *Transcontinent Television Corp.* v. *FCC,* 113 App. D.C. 384, 308 F. 2d 339 (1962), simply did not involve the question of the right to a Section 309(e) hearing respecting an application filed in full conformity with the Rules (Main Br. p. 49 n. 61) and accompanied by a petition for a waiver.[6] The same is true of *Gerico Investment Co.* v. *FCC,* 103 App. D.C. 141, 255 F. 2d 893 (1958), while in the other case cited by the Commission, *Pittsburgh Radio Supply House* v. *FCC,* 69 App. D.C. 22, 98 F. 2d 303 (1938), applications for power of 5 kw *were* designated for hearing although the pertinent Commission rule restricted power to 1 kw.[7]

---

[5] While the Commission chooses to gloss over this distinction, it confesses to a "technical modification" of WGN's license without a hearing and admits that WJR had a "right to a hearing." (Br. pp. 50 n. 18, 52 n. 20) In view of the fact that WJR, individually and as a member of CCBS, filed pleadings on October 16, 1961 (R. 4357-78, 4200-94) requesting the Commission to reconsider the rule making proposals that would effect a modification of its license, it is somewhat strained for the Commission to insist that WJR should have filed on or before November 3, 1961 another pleading pursuant to the provisions of Section 1.64 of the Commission's Rules, when the additional pleading would have contained the identical showing and request for relief that WJR had already filed.

Plainly, the hearing rights of an applicant who has made a showing of the type outlined by *United States* v. *Storer*

---

[6] In *Transcontinent,* no pending application had been denied without a hearing and the licensee was in fact afforded a hearing, albeit in a rule making procedure, *on the specific modification proposed by the Commission.* Here, to the contrary, neither WJR nor WGN was given any hearing regarding the specifics of operation at 750 kw and neither was given notice or afforded an opportunity to be heard on any specific Commission proposal to assign KFMB, San Diego, California, to WJR's assigned frequency or to assign a specific second fulltime station to operate on WGN's assigned frequency.

[7] The decision recited the following facts:

> The Commission, in view of this rule, advised Head of the Lakes and Pittsburgh that their applications requested more power than was permitted under the rule, but the applicants replied that they nevertheless desired to prosecute the applications. The Commission accordingly designated the applications for hearing along with other 5000-watt applications * * *. *Id.* at 23, 98 F. 2d at 304.

Broadcasting Co., 351 U.S. 192 (1956), are illusory if the Commission is free to deny a hearing merely because it believes that "the rule making procedure is the appropriate vehicle for its further study * * *." (Br. pp. 58-59) If the Commission wishes to channel at its discretion certain kinds of applications into its rule making procedures, it should promulgate rules to that end. But the Commission cannot, consistent with the Administrative Procedure Act, 5 U.S.C. § 1002(a), inaugurate *ad hoc* rules to dispose of particular applications.

Accordingly, the Commission should not have denied and returned the WGN and WJR 750 kw applications without a hearing inasmuch as the "accompanying papers * * * set forth reasons, sufficient if true, to justify a change or waiver of the Rules." *United States* v. *Storer Broadcasting Co.,* 351 U.S. 192, 205 (1956); *Interstate Broadcasting Co.* v. *FCC,* No. 17070, D.C. Cir., April 30, 1963, Slip Op. at 8-9.

Respectfully submitted,

THE GOODWILL STATIONS, INC.
Fisher Building
Detroit 2, Michigan

WGN, INC.
2501 West Bradley Place
Chicago 18, Illinois

By
REED T. ROLLO
KELLEY E. GRIFFITH
R. RUSSELL EAGAN

of

KIRKLAND, ELLIS, HODSON,
CHAFFETZ & MASTERS
800 World Center Building
Washington 6, D. C.

Their Attorneys

May 13, 1963

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,498

THE GOODWILL STATIONS, INC., **Appellant,**

v.

FEDERAL COMMUNICATIONS COMMISSION, **Appellee,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

No. 17,499

WGN, INC., **Appellant,**

v.

FEDERAL COMMUNICATIONS COMMISSION, **Appellee,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

No. 17,500

THE GOODWILL STATIONS, INC. and WGN, INC., **Petitioners,**

v.

UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION, **Respondents,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

Appeals from and Joint Petition to Review and Set Aside
Orders of the Federal Communications Commission

VOLUME I **Pages 1 - 322**

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,498

THE GOODWILL STATIONS, INC., **Appellant,**
v.
FEDERAL COMMUNICATIONS COMMISSION, **Appellee,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

No. 17,499

WGN, INC., **Appellant,**
v.
FEDERAL COMMUNICATIONS COMMISSION, **Appellee,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

No. 17,500

THE GOODWILL STATIONS, INC. and WGN, INC., **Petitioners,**
v.
UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION, **Respondents,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

Appeals from and Joint Petition to Review and Set Aside
Orders of the Federal Communications Commission

JOINT APPENDIX

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JOINT APPENDIX

[Filed March 8, 1963]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

THE GOODWILL STATIONS, INC.,
Appellant,
v. Case No. 17,498
FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

TRANSCONTINENT TELEVISION CORPORATION,
MIDWEST RADIO-TELEVISION, INC.,
AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.,
WXYZ, INC.,
Intervenors.

WGN, INC.,
Appellant,
v. Case No. 17,499
FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

TRANSCONTINENT TELEVISION CORPORATION,
MIDWEST RADIO-TELEVISION, INC.,
AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.,
WLS, INC.,
Intervenors.

THE GOODWILL STATIONS, INC., and WGN, INC.,
Petitioners,
v. Case No. 17,500
UNITED STATES OF AMERICA and the
FEDERAL COMMUNICATIONS COMMISSION,
Respondents,

TRANSCONTINENT TELEVISION CORPORATION,
MIDWEST RADIO-TELEVISION, INC.,
AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.,
WXYZ, INC.,
WLS, INC.,
WESTINGHOUSE BROADCASTING COMPANY, INC.,
CROSLEY BROADCASTING COMPANY, INC.,
CITY OF NEW YORK MUNICIPAL BROADCASTING
SYSTEM (WNYC), Intervenors.

JOHN POOLE BROADCASTING COMPANY, INC.,)
Appellant,)
v.) Case No. 17,502
FEDERAL COMMUNICATIONS COMMISSION,)
Appellee,)
TRANSCONTINENT TELEVISION CORPORATION,)
MIDWEST RADIO-TELEVISION, INC.,)
Intervenors.)

JOHN POOLE BROADCASTING COMPANY, INC.,)
Petitioner,)
v.) Case No. 17,503
UNITED STATES OF AMERICA and the)
FEDERAL COMMUNICATIONS COMMISSION,)
Respondents,)
TRANSCONTINENT TELEVISION CORPORATION,)
MIDWEST RADIO-TELEVISION, INC.,)
Intervenors.)

PREHEARING STIPULATION

I. Counsel for Appellants-Petitioners, Appellee-Respondents, and Intervenors in Case Nos. 17,498, 17,499 and 17,500, hereby stipulate that the issues presented by Case Nos. 17,498, 17,499 and 17,500 are as follows:

1. Did the Commission's Orders adopted September 13, 1961 and November 21, 1962 in Docket 6741 terminating a proceeding commenced as a general hearing to resolve issues, among others, raised by the fact that large areas of the U.S. were without primary standard broadcast service and by applications for power in excess of 50 kw and for operation of additional stations on Class I-A Clear Channel frequencies:

(a) Violate Section 307 (b) or Section 303 (f) of the Communications Act by authorizing one additional station to operate day and night on each of 13 of the 25 Class I-A frequencies and by refusing to amend the rule limiting the power of Class I-A stations to 50 kw, thus providing improved nighttime service to a maximum of only 600,000 of the over 25 million people living in over half of the land area of the continental U.S. who do not receive a single acceptable nighttime primary service and denying improved nighttime service to almost 25 million people by refusing to authorize Class I-A stations to operate with power in excess of 50 kw?

[Counsel for Appellee-Respondents and for Intervenors, Transcontinent Television Corporation, Midwest Radio-Television, Inc., American Broadcasting-Paramount Theatres, Inc., WXYZ, Inc., WLS, Inc., and City of New York Municipal Broadcasting System (WNYC), believe the foregoing issue should read as follows: "(a) Violate Section 307(b) or Section 303(f) of the Communications Act by authorizing additional stations to operate day and night on each of 13 of the 25 Class I-A frequencies and by refusing to amend the rule limiting the power of Class I-A stations to 50 kw."]

(b) Erroneously fail to give due consideration to H. Res. 714 passed July 2, 1962 which expressed the sense of the House of Representatives that (1) the Commission was free, notwithstanding a 1938 Senate Resolution to the contrary, to authorize power in excess of 50 kw, if found to be in the public interest, and (2) the Commission should not authorize any additional fulltime stations on any of the 25 Class I-A frequencies for a period of a year so that the Commission would have an opportunity to reconsider its September 13, 1961 Order in light of H. Res. 714 and so that Class I-A stations would have an opportunity to file applications for higher power?

(c) Erroneously deny the licensees of WJR (Detroit, Michigan) and WGN (Chicago, Illinois) hearing rights under Sections 303(f), 309(e) or 316 of the Communications Act by deciding to permit (1) KFMB (San Diego, California) to operate fulltime on the Class I-A frequency (760 kc) assigned to WJR, and (2) a yet to be determined station located in Idaho or Nevada to operate fulltime on the Class I-A frequency (720 kc) assigned to WGN?

(d) Erroneously make findings and conclusions unsupported by record evidence or erroneously fail to set forth (1) rational reasons supporting the decision, or (2) findings supporting the conclusions?

2. Did the Commission's Order adopted November 21, 1962, which, without a hearing, denied petitions filed by the licensees of WJR and WGN requesting that pertinent rules be waived and accompanying applications to increase power from 50 kw to 750 kw be accepted for filing in accordance with Rules 1.15 and 1.307(a):

(a) Erroneously deny the licensees of WJR and WGN their rights to a Section 309(e) hearing on their 750 kw applications by failing to (1) set forth rational reasons demonstrating that WJR and WGN had failed to allege reasons, sufficient if true, to justify a waiver of the pertinent rules, and (2) give due consideration to H. Res. 714 passed July 2, 1962?

(b) Erroneously fail to accord the licensees of WJR and WGN a hearing before denying their petitions to waive pertinent rules and accept for filing their 750 kw applications?

II. Counsel for Appellee-Respondents stipulate to the foregoing issues without prejudice to the effect, if any, which this Court's disposition of the pending Government's Motion to Dismiss in part Case Nos. 17,498, 17,499 and 17,500, filed on February 25, 1963, may have on the foregoing issues.

III. Counsel for Intervenor, Transcontinent Television Corporation, reserves the right to argue that one or more of the foregoing issues are not properly before the Court.

IV. Counsel for all of the parties in Case Nos. 17,498, 17,499 and 17,500 further stipulate:

1. Appellants-Petitioners and Intervenors, Westinghouse Broadcasting Company, Inc. and Crosley Broadcasting Company, Inc.,

will serve and file their briefs on or before May 7, 1963; Appellee-Respondents and Intervenors, Transcontinent Television Corporation, Midwest Radio-Television, Inc., American Broadcasting-Paramount Theatres, Inc., WXYZ, Inc., WLS, Inc., and City of New York Municipal Broadcasting System (WNYC), will serve and file their briefs on or before July 7, 1963; and, Appellants-Petitioners will serve and file their reply brief, if any, on or before July 28, 1963.

2. The Joint Appendix shall be filed on or before July 28, 1963. References to the record appearing in the various briefs of the parties shall be to the page numbers in the original record certified to this Court in the above-captioned cases. In the printing of the Joint Appendix there will be set forth, in addition to the consecutive numbering of the pages of the Joint Appendix, the original record page numbers in bold type and indented in a manner which will render it convenient for the Court to locate the pages referred to in the briefs.

Respectfully submitted,

/s/ Lionel Kestenbaum
Attorney,
Department of Justice

/s/ R. Russell Eagan
Counsel for The Goodwill
Stations, Inc. and WGN, Inc.

/s/ John W. Steen
Counsel for Westinghouse
Broadcasting Co., Inc.

/s/ Herbert M. Schulkind
Counsel for Midwest Radio-
Television, Inc.

/s/ D. M. Patrick
Counsel for Crosley Broad-
casting Corp.

/s/ Daniel R. Ohlbaum
Associate General Counsel,
Federal Communications Commission

/s/ Ernest W. Jennes
Counsel for Transcontinent
Television Corporation

/s/ Charles S. Rhyne
Counsel for City of New York
Broadcasting System (WNYC)

/s/ James A. McKenna, Jr.
Counsel for American Broadcasting-
Paramount Theatres, Inc., WXYZ,
Inc., and WLS, Inc.

March 6, 1963

[Filed March 8, 1963]

Before: Washington, Circuit Judge, in Chambers

ORDER

Counsel for the parties in the above-entitled cases having submitted their prehearing stipulation pursuant to Rule 38(k) of this court, and the stipulation having been considered, and it appearing that these cases have been pending in this court since December 27, 1962, it is

ORDERED that the stipulation as to issues is hereby approved, and the times for filing the briefs and the joint appendix of the parties is hereby fixed as follows:

> Appellant-petitioners and intervenors Westinghouse Broadcasting Company, Inc., and Crosley Broadcasting Company, Inc., shall file their briefs on or before April 1, 1963. Said briefs may be filed in typewritten form, on condition that the printed briefs shall be filed within 10 days thereafter.
>
> Appellee-respondents and intervenors Transcontinent Television Corporation, Midwest Radio-Television, Inc., American Broadcasting-Paramount Theatres, Inc., WXYZ, Inc., WLS, Inc., and City of New York Municipal Broadcasting System, shall file their briefs on or before April 29, 1963. Said briefs may be filed in typewritten form, on condition that the printed briefs shall be filed within 10 days thereafter.
>
> Reply briefs, if any, in printed form and the joint appendix shall be filed on or before May 13, 1963.

it is

FURTHER ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and the order shall be printed in the joint appendix herein.

No extensions of time for filing the briefs and joint appendix of the parties shall be granted except for extraordinary and unforeseeable cause shown.

Dated: Mar. 8, 1963

80660

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

In the Matter of)
Clear Channel Broadcasting) DOCKET NO. 6741
in the Standard Broadcast Band)

ORDER

WHEREAS, this Commission and its predecessor, the Federal Radio Commission, have since November 11, 1928 designated certain channels in the standard broadcast band as "clear channels" the purpose of which is to render service over large areas and to bring service to the rural population of the United States; and

WHEREAS, there are still large areas of the continental United States which have no radio service during the day and no primary radio service at night; and

WHEREAS, the Commission has received many applications requesting authorization for the operation of additional stations and for the use of higher power on the clear channel frequencies; and

WHEREAS, these applications raise issues which can more appropriately be considered in a general hearing than in a hearing limited to particular applications; and

WHEREAS, the North American Regional Broadcasting Agreement expires March 29, 1946, and it is desirable to determine what, if any, changes are necessary in connection with clear channel assignments prior to a renegotiation of the treaty;

NOW, THEREFORE, IT IS ORDERED, this 20th day of February, 1945, that a hearing be held before the Commission en banc commencing at 10:30 A.M. on May 9, 1945, at the offices of the Commission in Washington, D. C., for the purpose of determining:

1. What recommendation concerning the matters covered by this order the Commission should make to the Department of State for changes in provisions of the North American Regional Broadcasting Agreement.

[A]

2. Whether the number of clear channels should be increased or decreased and what frequencies in the standard broadcast band shall be designated as 1-A channels and as 1-B channels.

3. What minimum power and what maximum power should be required or authorized for operation on clear channels.

[B]

4. Whether and to what extent the authorization of power for clear channel stations in excess of 50,000 watts would unfavorably affect the economic ability of other stations to operate in the public interest.

5. Whether the present geographical distribution of clear channel stations and the areas they serve represent an optimum distribution of radio service or whether the fair, efficient, and equitable distribution of radio service among the several states and communities specified in Section 307(b) of the Communications Act requires a geographical redistribution at this time.

6. Whether it is economically feasible to relocate clear channel stations so as to serve those areas which do not presently receive service.

7. What new rules or regulations, if any, should be promulgated to govern the power or hours of operation of Class II stations operating on clear channels.

8. What changes the Commission should order with respect to geographical location, frequency, authorized power or hours of operation of any presently licensed clear channel station.

9. Whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas.

10. The extent to which the service areas of clear channel stations overlap and the extent to which this involves a duplication of program service.

11. What recommendation, if any, the Commission should make to the Congress for the enactment of additional legislation on the matters covered by this order.

IT IS FURTHER ORDERED, that persons or organizations desiring to appear and testify shall notify the Commission of such intention on or before April 2, 1945, stating the names of all witnesses who will appear, the topic each will discuss and the time expected to be required for the testimony.

FEDERAL COMMUNICATIONS COMMISSION

/s/ T. J. Slowie
Secretary

[C]

80962
PUBLIC NOTICE
March 9, 1945

INFORMAL ENGINEERING CONFERENCE

Preliminary studies in preparation for the hearing entitled "In the Matter of Clear Channel Broadcasting in the Standard Broadcast Band," Docket No. 6741, indicate that among other things:

1. Certain determinations with respect to Clear Channels are closely allied with, if not inseparable from, Regional and Local Channel studies.
2. Duplication of much of the preparatory work can be eliminated by agreement between the Commission's and industry engineers as to who will do what work.
3. Advance agreement insofar as possible on all standards to be employed will not only greatly facilitate the work, but will materially shorten the hearing.
4. Much more satisfactory standards can be obtained through informal rather than formal proceedings, at least in the early stages.

In view of the above, an Informal Engineering Conference is scheduled to be held at 10:00 a.m., Friday, March 16, 1945, in the Commission's Meeting Room, Room 6121 New Post Office Building, 12th and Pennsylvania Avenue, N.W., Washington, D. C.

It is urged that all engineers who are expecting to participate in the Clear Channel Hearing, or who are interested in possible changes in the allocation standards for standard broadcast stations, be present.

The tentative main subjects of the agenda are as follows:

A. What constitutes a satisfactory signal.
B. What constitutes objectionable interference.
C. Distances at which, and areas over which, various signal strengths are delivered.
D. Who will do what work in determining the above.
E. Appointment of an industry group or representative to work with the Engineering Department of the Commission on matters of general interest.
F. Appointment of groups or representatives of particular interests to work with the Engineering Department of the Commission.
G. What assistance can be given the Engineering Department of the Commission on work which it is to do.

/s/ George P. Adair
Chief Engineer

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[1]

FURTHER NOTICE OF PROPOSED RULE MAKING

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FCC 58-350

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FURTHER NOTICE OF PROPOSED RULE MAKING

Introduction

1. The essential question before us in this proceeding is whether and in what manner it may be desirable to amend the rules governing the use of the standard broadcast frequencies designated as "clear channels".

2. In its Order of February 20, 1945, by which this proceeding was initiated, the Commission noted that "there are still large areas of the continental United States which have no radio service during the day and no primary radio service at night". Referring to numerous applications for the assignment of additional radio stations to the clear channel frequencies, and to requests for the authorization of higher power on these frequencies, the Commission designated eleven issues for hearing, with the announced object of determining what, if any, changes should be

made in existing clear channel allocations.

3. It was stated that it would be desirable to make these determinations prior to the forthcoming renegotiation of the North American Regional Broadcasting Agreement of 1941. That Agreement, due to expire March 29, 1946, set out the conditions under which the signatory Governments in North America agreed to restrict their respective use of the standard broadcast frequencies, in the interest of minimizing interference among the broadcast services of the several countries. Effective improvement of the domestic service in this country would have to be achieved in the light of limitations agreed to internationally, both with respect to use of the frequencies in question by the United States and by stations in other countries.

4. It was not possible, however, to conclude this proceeding prior to the renegotiation of the NARBA Agreement. The record of this proceeding did, however, provide useful guidance to representatives of the United States Government in the negotiation of the revised NARBA which was signed in 1950. A separate Agreement between the United States of America and the United Mexican States was signed in January, 1957. While neither the latter Agreement nor the revised NARBA have yet been

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ratified by the United States Government, and have not yet formally entered into effect, they furnish the basis on which the signatory North American Governments in practice allocate the domestic use of the clear channel and other standard broadcast frequencies.

5. Parties to this proceeding have, in a voluminous and complex record, advocated numerous, diverse approaches to the basic problem of achieving more efficient use of the clear channels and of improving the deficiencies in the radio service available to the public on those channels. The eleven issues originally designated for hearing in this proceeding, while specific in some respects, were collectively so broad

as to permit the parties to advocate any mode of revising clear channel allocations ranging all the way from exclusive nighttime use of selected clear channels by a single station operating at powers increased very substantially higher than the present maximum of 50 kw, to the reclassification of selected clear channels as "local channels" on which it would be possible to assign over a hundred and fifty stations operating at maximum powers of 250 watts. Between these extremes a wide variety of proposals were admissible and were submitted.

6. The record reflects two basically divergent views concerning the measures best calculated to improve the efficient use of the clear channel frequencies. Some parties urge that the chief goal should be to improve the capacity of the major clear channel stations (particularly the Class I-A stations) to provide a satisfactory signal to wide areas, and that this should be achieved by permitting those stations substantially increased power and by limiting (and, during the nighttime hours, excluding) co-channel stations. Other parties contend that the most desirable objective would be to increase the numbers of unlimited time stations on the clear channels and to reduce the degree of protection now afforded to the clear channel stations throughout wide service areas.

7. Since the record of this proceeding was closed, numerous changes have occurred in the radio broadcasting industry. It was during the intervening period that television acquired importance as a new, separate nationwide broadcast service. The advent of television has had a marked impact on radio broadcasting. The nature, source, scheduling and methods of financing of radio programs have undergone appreciable change. There has been a discernable shift in the degree of reliance, by both stations and audiences, on nationwide radio network programs. Radio listening habits have altered substantially, both in the total daily hours of listening per family, and in the incidence of the peak

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radio listening hours. Progressively larger proportions of radio broadcast revenues have been drawn from regional and local advertisers than formerly, when national advertisers furnished the major portion of such revenues. Spot advertising has risen markedly while sponsorship of national network programs has correspondingly declined.

8. The same period has also witnessed the definitive establishment of the FM radio service. Moreover, during the thirteen years which have elapsed since this proceeding began, the total number of standard broadcast stations increased from 900 to 3300. Large numbers of smaller communities, formerly dependent on radio stations located in other, more or less distant cities, now have local outlets.

9. In these circumstances, although the Commission desires to resolve the issues of this proceeding with the least possible delay, we have concluded that it would be inappropriate, and inconsistent with sound and fair procedure, to attempt to arrive at final conclusions solely on the basis of the out-dated record before us.

10. At the same time, it would cause needless additional delay merely to reopen the record on the same broad issues as were originally designated. The updating and supplementing of some of the data contained in exhibits originally introduced into this record will be useful. We think it desirable, however, in providing an opportunity for this to be done, to indicate those areas in which we believe it would be useful to concentrate attention at this stage of the proceeding, in the interests of as sound and expeditious resolution of the problem as is possible.

The Basic Allocations Problem

11. Pursuant to long-standing domestic radio allocations rules and international agreements for the North American Region, all United States standard broadcast stations are assigned to the one hundred and seven 10-kc channels designated for this purpose in the frequency range 535-1605 kcs. Over three thousand standard broadcast stations are currently operating on these one hundred and seven channels and their number constantly increases as new assignments are approved.

12. The rules governing the assignment of standard broadcast stations to specific frequencies seek to achie[ve], as fully as possible, all three of the basic objectives of:

(a) Providing some service of satisfactory signal strength to all areas in the country;

(b) Providing as many program choices to as many listeners as possible, and

(c) Providing service of local origin to as many communities as possible.

[5]

The effective implementation of these three objectives involves, however, inescapable conflict. This conflict arises from the fact that standard broadcast signals extend far beyond the range within which the signal has sufficient field strength to render a usable service. It follows that the maximum area coverage is obtainable by a single station or a restricted number of high power stations on a given channel. Conversely, the assignment of large numbers of local outlets on any channel can be achieved at the cost of restricting the co-channel station coverage to the small interference-free service area resulting from mutual skywave interference. Thus, on any given channel, allocation techniques designed for the maximum implementation of Objective (a) derogate from the achievement of Objective (c) and vice versa. There are similar conflicts affecting the maximum implementation of Objective (b).

13. Owing to marked differences in the daytime and nighttime propagation of radio signals in the standard broadcast band these conflicts are much more evident during the nighttime hours than during the daytime. Skywave propagation, effective chiefly during the hours between sunset and sunrise (although present to a lesser degree during a pre-sunset build-up and a post sunrise period of waning intensity), transmits signals much farther than the steadier, but shorter-range groundwave signals which are present both day and night. The field intensity of skywave signals is, however, subject to wide fluctuations, from minute to minute, hour to hour, night to night, season to season, and even year to year (depending on the phase of the sunspot cycle). Thus,

[5]

skywave, or secondary service, is defined in terms of statistical norms or percentages of the time during which the field intensity achieves specified levels. Half the land areas of the United States lie beyond the range of interference-free groundwave signals and are, accordingly dependent on this skywave or secondary standard broadcast service.

14. As in the case of groundwave signals, but to a markedly greater degree, the interference potential of skywave signals extends very much farther than the range of serviceable signals. It follows that the protection of secondary service areas at night requires much more stringent limitations on the assignment of co-channel stations than does the daytime protection of groundwave service.

15. The impossibility of simultaneously implementing all three of the above stated allocation objectives on any individual channel led to the classification of individual channels into separate groups, with different rules for the assignment of stations, depending upon the purpose for which each class of channel was established. The three basic classifications are clear channels, which are the subject of this proceeding; regional channels, on which stations are assigned under conditions permitting service to large metropolitan areas and immediately adjacent areas; and local channels for the assignment of the maximum possible number of stations serving as local outlets for numerous smaller communities.

[6]

16. Skywave or secondary service free from objectionable interference is provided only by Class I stations assigned to the clear channels; and this service is made possible only by rigid restrictions on the number of stations which may be assigned to the clear channels at night, and by limitations on the radiations of the secondary stations assigned to those channels. Twenty-four of the clear channels are reserved for the exclusive use at night of a single Class I-A station. On most of the remaining 23 clear channels more than one (but, in practice, generally

not more than two) Class I-B dominant stations are assigned under conditions requiring mutual protection through the use of directional antennas.

17. The assignment of secondary or Class II stations is permitted on all the clear channels, but unlimited time Class II stations are at present assignable only on clear channels occupied by Class I-B stations.

18. The existing restrictions on the assignment and mode of operation of Class II stations were established with a view to insuring the capacity of the clear channel stations to render the wide-area service for which they were created, and on which more than half of the land area of the United States is dependent, since it lies beyond the range of the groundwave or primary service provided by any of the existing stations.

19. One of the principal purposes of this proceeding is to determine the conditions under which the assignment and operating conditions of both Class I and Class II clear channel stations can provide the most efficient use of the clear channels. The essential conflict in the proposals for revision of the present rules lies between increasing the capacity of the Class I stations to render the wide area service and increasing the number of stations permitted on the clear channels.

20. Both objectives have merit. But owing to the unalterable facts of radio transmission in the standard broadcast band, the fullest implementation of either can be achieved only at the cost of derogating from the other. Our difficult task is to find the balance best calculated to serve the public interest.

[7]

Chronology of this Proceeding

21. By Order dated February 20, 1945 the Commission designated for hearing the following eleven issues:

(1) What recommendation concerning the matters covered by this order the Commission should make to the

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Department of State for changes in provisions of the North American Regional Broadcasting Agreement.

(2) Whether the number of clear channels should be increased or decreased and what frequencies in the standard broadcast band shall be designated as I-A channels and as I-B channels.

(3) What minimum power and what maximum power should be required or authorized for operation on clear channels.

(4) Whether and to what extent the authorization of power for clear channel stations in excess of 50,000 watts would unfavorably affect the economic ability of other stations to operate in the public interest.

(5) Whether the present geographical distribution of clear channel stations and the areas they serve represent an optimum distribution of radio service on whether the fair, efficient, and equitable distribution of radio service among the several states and communities specified in Section 307(b) of the Communications Act requires a geographical redistribution at this time.

(6) Whether it is economically feasible to relocate clear channel stations so as to serve those areas which do not presently receive service.

(7) What new rules or regulations, if any, should be promulgated to govern the power or hours of operation of Class II stations operating on clear channels.

(8) What changes the Commission should order with respect to geographical location, frequency, authorized power or hours of operation of any presently licensed clear channel station.

(9) Whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas.

(10) The extent to which the service areas of clear channel stations overlap and the extent to which this involves a duplication of program service.

(11) What recommendation, if any, the Commission should make to the Congress for the enactment of additional legislation on the matters covered by this Order.

22. In March and April, 1945, four Government-Industry Committees were established to:

1. Determine what constitutes a satisfactory signal.
2. Determine what constitutes objectionable interference.
3. Determine the distances over which signals of various field intensities are transmitted.
4. Coordinate the conduct of listener surveys.

23. Evidentiary hearings were conducted during 40 days between January 14, 1946, and October 31, 1947.

24. On February 5, 1946, the Commission announced the adoption of the policy of dismissing applications for station assignments or modifications of station assignments which were not permissible under the existing rules in that they either sought additional unlimited-time assignments on channels reserved for the exclusive night use of a single Class I-A station, or sought authorization to transmit in excess of the established 50-kw power limitation.

25. In June, 1946, the Commission announced the adoption of a policy limiting the processing of applications for Class II stations on channels occupied by Class I-A stations to daytime stations located within 750 miles of the dominant Class I-A station. This was intended to avoid new assignments in areas sufficiently removed from the existing Class I-A station that it would be possible to assign new unlimited-time stations in such areas, in the event it were decided subsequently to do so.

26. In May, 1947, the Commission initiated a separate proceeding (Docket No. 8333) to determine whether and the extent to which limitations should be imposed on the daytime (i.e., pre-sunset and post-sunrise) skywave radiations toward Class I-A and I-B clear channel stations. At the same time the Commission announced that it would, pending a decision in that proceeding, withhold action on all applications proposing new or increased daytime-only facilities in the United States clear channels.

27. On January 19, 20, and 21, 1948, oral argument was held on the then consolidated clear channel and daytime skywave proceedings.[1]

28. In December, 1950, the freeze on the processing of specified types of applications for Class II facilities on the U.S. clear channels was revised and codified as a footnote to Section 1,371 of the rules. As further revised (in August and October, 1953, and April, 1956) the current policy on deferral of action on applications for new and increased Class II facilities on the clear channels is found in Section 1.351 of the present rules. In general, it covers applications for new daytime or limited time assignments on the clear channel frequencies and applications proposing unlimited time Class II assignments which would operate differently during the daytime and nighttime hours on the clear channel frequencies.

Recent Pleadings

29. On November 16, 1956, the Clear Channel Broadcasting Service filed a petition to reopen the record in the Clear Channel proceeding (Docket No. 6741), to consolidate it with the daytime skywave proceeding (Docket No. 8333) and to afford opportunity for the submission of additional evidence, bringing certain exhibits up to date, either in the form of written comments or through further evidentiary hearings. In a response to the foregoing CCBS petition, the Daytime Broadcasters' Association on December 20, 1956, requested dismissal of the clear channel proceeding, removal of the freeze on the clear channels and

institution of rule making on the Association's earlier petition, as amended and revised on December 8, 1955, requesting that daytime stations be authorized to operate from 5 a.m. or sunrise, whichever is earlier, to 7 p.m. or sunset, whichever is later. DBA requested that, in the alternative, if the Commission should grant the CCBS petition to reopen the clear-channel record, the freeze on new assignments to the clear channels in any event be lifted and rule making be initiated on its proposal for extended hours of operation of daytime stations. In a reply to the foregoing DBA pleading, which was filed December 27, 1956, CCBS opposed DBA's requests. On December 28, 1956, Albuquerque Broadcasting Co., the licensee of Station KOB, filed a petition requesting that irrespective of whether the Commission decided to grant or deny the CCBS petition of November 16, 1956, to reopen the record in the Clear Channel proceeding, the Commission in any case, on the basis of the Clear Channel record, select and designate a channel for a permanent assignment for KOB.

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[1] Docket 8333 had been consolidated with Docket 6741 in December, 1947. The two proceedings were again severed in 1953.

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30. In its Notice of Proposed Rule Making adopted September 17, 1957, in Docket No. 12274, the Commission granted the foregoing request of DBA that rule making be instituted on the proposal that daytime broadcast stations be authorized longer hours of operation. In the same document DBA's requests for dismissal of the instant clear channel proceeding and immediate removal of the freeze on the processing of specified types of applications for Class II assignments on clear channel frequencies was denied. The reasons for those actions are set out at length in the above referenced Notice of Proposed Rule Making and need not be repeated here. The above cited petitions of CCBS and Albuquerque Broadcasting Co. are dealt with hereinafter.

The Record

31. The entire record of the Clear Channel proceeding includes over 6,000 pages of testimony, over 400 exhibits ranging from one to several hundred pages in length, numerous written briefs, and over 500 pages of oral argument.

32. The witnesses include, in addition to the members of the FCC engineering staff who testified and placed exhibits in the record: representatives of the radio networks, the Clear Channel Broadcasting Service, representing the independent (i.e., non-network owned) Class I stations, a number of other standard broadcast stations, the Regional Broadcasters Committee, and numbers of educational associations, educational institutions and farm organizations.

33. Because this Notice does not embody final decisions, but rather is intended to afford interested parties an opportunity to submit up-to-date data and comments in support of or in opposition to the reallocation plan set out herein below, little useful purpose would be served at this stage by an exhaustive, detailed discussion of the old record. Some of it, owing to the elapse of ten years and the substantial changes in the interim, has little present value. In this category are the ten-year old listener surveys conducted under Government and private auspices, and the out-of-date information on network program availabilities in various areas. Interim changes in radio listening habits and network affiliations, and the diminishing differences between network and locally originated radio programming have stripped those portions of the record of their usefulness.

34. On the other hand the new engineering standards (introduced in Exhibit 109) for calculating the incidence of groundwave and skywave services of six different grades, (Types A through F), remain as they were originally, the most comprehensive and realistic tools yet devised for evaluation of standard broadcast service. Additionally, we know from supplementary information that the maps depicting the numbers of such services available in various parts of the country are still repre-

sentative of overall conditions and need only some updating to reflect the additional, chiefly small, groundwave service areas added in the interim by newly assigned stations.

[11]

35. The standards referred to in the preceding paragraph were formulated early in the proceeding by three Government-Industry Committees, and were used in preparing numerous exhibits depicting the extent of available groundwave and skywave services. These standards take into account several factors, such as atmospheric noise, which are not reflected in the rules under which the field intensities of a station's signals are calculated for purposes of making station assignments. The refinements embodied in Types A, B, and C groundwave service and in Types D, E, and F skywave service provide useful bases for assessing the extent of the improvements possible under various proposed clear channel reallocations. It must be borne in mind, however, that the calculation of station coverage and of the numbers of services available depends on the choice of a standard for measuring service and that radio service can be calculated only in terms of statistical norms and probabilities. This is especially true of skywave service which is subject to wide, irregular fluctuations. No single method of calculating service can convey all the facts. The more stringent the standard, the smaller the indicated coverage of individual stations and the fewer the indicated number of services in any particular area. Conversely, depictions of service by a lower standard will show wider station coverage and more services in given areas.

36. Maps depicting available services based on the refined standards introduced in this record, especially in terms of the middle grade of groundwave service (Type B) and the middle grade of skywave service (Type E), have provided useful showings of existing services. For reasons discussed later these showings remain essentially valid today.

Tentative Conclusions

37. We have already referred, in the introductory paragraphs of this Notice, to the inadequacies of the present record as a basis for supporting final conclusions, largely because of major changes which have occurred in radio broadcasting since the record was closed 10 years ago. We also pointed out, however, that our effort to conclude this proceeding at the earliest possible date will be facilitated if note is taken, at this stage, of the tentative conclusions indicated by the present record, and if the parties will direct their further comments primarily to those areas of action which appear to offer the best prospects for practicable improvement of the service rendered to the public on clear channel frequencies. In determining which kinds of clear channel reallocations could be pursued most fruitfully at this stage, it is appropriate to note such tentative conclusions as may be drawn from the present record, taking into account generally known facts concerning subsequent changes in the radio broadcasting industry.

White Areas

38. This term refers to areas without groundwave, or primary service. When the present record was compiled, an aggregate of about half of the land area of continental United States, with a population of about 24 million people, had no nighttime primary service. The increment, meanwhile, of nearly 2,000 additional standard broadcast stations, appears to have reduced the nighttime white areas only to a minor extent.

39. Neither new daytime stations, nor new unlimited time stations whose primary service areas were already receiving groundwave service from other stations, have reduced the nighttime white areas. On the other hand, stations newly assigned to communities previously lacking groundwave service have reduced white areas to the extent of their primary coverage. Generally, however, their coverage is restricted by several factors such as the use of low power, assignment to a high frequency, interference, or combinations of the foregoing. Since the

population density within the primary service areas of the foregoing new stations is typically greater than in the remaining white areas beyond their range, it appears probable that in the interim there has been a proportionately greater reduction in white area population, than in the numbers of square miles of white area. According to one estimate the present white area population has been reduced from about 24 million to about 20 million. The geographical extent of the white areas appears, however, to remain close to half the land area of the United States -- approximately what it was when the record of this proceeding was compiled.

Available Skywave Service in White Areas

40. Exhibits showing the numbers of available skywave service vary substantially, depending upon whether they are based on the methods and standards for engineering calculations set out in the present rules,

[13]

or whether the basis is taken to be Type D, E, or F -- the three grades of the skywave service defined in Exhibit 109. It is well known that even in areas where there is no skywave service of a given standard, skywave service will be present by another standard. The inherent variability of skywave service is such, moreover, that during some periods skywave service in areas in which the maps indicate lack it, is superior to what is available in parts of the areas which the maps indicate are provided with an acceptable standard of skywave service. In fact, there is no part of the United States which is totally devoid of one or more skywave services. The point we make here is that no method of depicting service can convey the full facts, and that we must be mindful of the fact that a determination of the extent of available service depends on the standards and criteria used in defining service.

Improvement of Service in White Areas

41. For the reasons briefly discussed in paragraph 39, there appear to be severe limits on the possibilities for reducing white areas

by creating new groundwave coverage from new or expanded standard broadcast stations and it follows that improvement of service throughout most of the existing white areas must be provided, if at all, by new or improved skyway service.

42. It is clear, moreover, that improvements in standard broadcast service to white areas must be sought from existing or newly assigned stations within the present standard broadcast band. To the extent that improvement must come from additional or augmented skywave signals, it must be provided by stations assigned to the present clear channels. For reasons which have already been discussed, there is no possibility for obtaining skywave service from stations assigned to regional and local channels. Nor is there any realistic prospect for increasing the number of clear channels by utilizing frequencies outside the existing standard broadcast band. This is precluded by both domestic and international use of other frequencies which might be technically suitable for this purpose.

The Impracticability of "Relocation" of Clear Channel Stations on a Significant Scale.

43. By "relocation" is meant the elimination of the present assignment of the clear channel station and the shifting of its location to some other city. "Relocation" should not be confused with "duplication" which is used hereinafter to describe the authorization of additional station assignments on a clear channel. Some parties have urged that Class I-A clear channel stations assigned to places like New York and Chicago, where there is a relative abundance of primary service, be relocated in smaller cities situated nearer to the white areas. These proposals do not, however, take adequate account of the need for high powered stations in the larger metropolitan areas with their relatively high man-made noise levels; and in general, the record fails to provide persuasive evidence that the service gains obtainable by relocating the

present Class I-A station assignments could justify the dislocations and losses of service provided by Class I-A stations.

Higher Power

44. An increase of power from 50kw to 750kw would have the effect of nearly quadrupling the field intensity of the transmitted signal at any reception point. An increase to 500kw would slightly more than triple the field intensity of the transmitted signals. The range of usable skywave signals would be considerably increased. Such increases are subject to considerable variation depending on the frequency employed, latitude and other factors; but the basic order of increase is indicated by the fact that at 500 kw the .5 mv/m 50% skywave contour would in many cases be located over 1,000 miles from the transmitter instead of about 700 miles, as in the case of a 50kw transmitter. At 750kw the .5 mv/m skywave contour would in many cases be located over 1,100 miles from the transmitter.

45. The improvement in groundwave or primary service is more variable, depending on the frequency employed, soil conductivity and other factors. The essential range of improvement is indicated by the fact that, while at 50 kw, a station operating on a middling frequency in an area of middling ground conductivity will place a .5 mv/m groundwave signal about 130 miles from the transmitter during most of the daytime hours, the same station at 500kw would place a signal of the same field intensity 190 miles from the transmitter; and at 750kw, about 205 miles from the transmitter.

46. At night, owing to the fact that the field intensity of both the skywave and groundwave signals would be increased by the same factor, there would be no change in the location of the fading zone where the station's skywave and groundwave approach equivalent field intensity, with resultant interference which limits the range of interference-free groundwave service. As a result the range of usable groundwave service would not be increased at night beyond the present range at 50 kw

unless changes in antenna characteristics are also made. The field intensity of the groundwave signals would, however, be increased three or four times, as the case may be, within the established primary service area. Moreover, the field intensity of skywave signals would similarly be increased within the present skywave service areas, in addition to the extended range of those skywave service areas.

[15]

Duplication of Unlimited Time Assignments on the Clear Channels

47. On the clear channels occupied by Class I-B stations the duplication of unlimited time assignments is already possible under the present rules. Typically, two Class I-B co-channel stations are assigned to individual Class I-B channels. These stations are required to directionalize their operation in such fashion as to protect the groundwave and skywave service rendered by the other co-channel I-B station. In addition, unlimited time Class II stations are assignable to Class I-B channels subject to established rules for mutual protection and for protection of the dominant Class I-B station on the channel. It appears, accordingly, that the status quo should be maintained in the rules governing the assignment of unlimited time stations to Class I-B channels.

48. As already discussed, Class I-A clear channel stations are currently given the exclusive use of their channels during the nighttime hours. It is therefore on the Class I-A channels that the maximum opportunities are available for the assignment of new, co-channel unlimited time stations, depending on a judgment as to the extent to which such action would be desirable in the light of the service gains and service losses involved.

Inefficiency of Present Allocations Rules for Class I-A Channels.

49. There is substantial support, in any event, for a conclusion that the exclusive nighttime use of a channel by a single station limited to 50 kw is less justifiable now than formerly, when clear channels were first allocated in this way. Since that time techniques have been established and highly developed for directional transmission of signals, with

a high degree of suppression now possible to protect the service areas of co-channel stations. In addition, heterodyne interference, resulting from uncontrolled deviations from the assigned frequency, has been substantially eliminated. Thus it is now possible, particularly in the case of Class I-A stations located in or near the northeast portion of the country, to assign additional co-channel, unlimited time stations to provide needed service at distant locations, while preserving the capacity of the present station to provide a usable signal over wide primary and secondary service areas. In these circumstances there is serious question whether the most efficient use of the Class I-A clear channels can be achieved under the long-standing rules which, on the one hand, preclude power above 50 kw, and on the other hand bar co-channel unlimited time assignments in distant areas the present station cannot effectively serve, and where a new station could be operated so as to afford reasonable protection to the areas the present station can effectively serve at 50 kw.

Additional Unlimited Time Assignments on the Present Class I-A Clear Channels.

50. On this record three modes of adding unlimited time assignments on Class I-A channels were discussed:

[16]

(a) Retention of the present Class I-A station assignment and the co-channel assignment, elsewhere, of an additional Class I station, each directionalized to protect the other.

(b) The assignment of a single Class I station in a new city, and reduction of the present station to Class II status, thereby substantially eliminating its skywave service and obliging it to protect the new Class I station.

(c) Preservation of the present station as a Class I assignment, and the co-channel assignment of unlimited time Class II stations required to protect the present station.

For reasons similar to those discussed in Paragraph 43 we have concluded that it would be undesirable and impractical to implement Alternative (b) above. Alternatives (a) and (c) would permit continued sky-wave service by existing Class I-A stations, while opening up opportunities for additional unlimited time co-channel assignments. Therefore, Alternatives (a) and (c), in our opinion, merit consideration for at least some of the Class I-A channels, on the basis described hereinafter.

The Higher Power versus Duplication Conflict.

51. Some of the parties treated the techniques of higher power and of duplication of unlimited time assignments on the Class I-A channels as approaches which were so contradictory that they are mutually exclusive. We are unable to reach such a conclusion. First, there is little reason why the implementation of one of these techniques on selected Class I-A clear channels should necessarily exclude implementation of the other technique on other Class I-A channels. There is, moreover, no inherent reason why, if the circumstances were found to be appropriate, higher power could not be permitted to more than one Class I station on a given channel, provided the transmitters were suitably directionalized to protect each other's service area.

52. A study of the circumstances of each of the individual Class I-A channels discloses, moreover, that in some cases, maximum net gains could be achieved through duplication, while in other cases, the maximum net service gains could be achieved through the use of higher power.

53. Thus, on a purely engineering basis, the optimum improvement of service is achievable by a judicious combination of higher power and duplication of the Class I-A clear channels. Higher power is best suited for use on channels where it would produce the maximum gains

in groundwave and skywave service in areas where these services are now most deficient, and where the use of higher power would not cause excessive

[17]

interference to other U. S. or foreign stations. On the other hand, the use of higher power by certain other clear channel stations would constitute wasteful use of limited spectrum space in that the service gains would be achieved principally in areas which are already well served, at the cost of reducing the numbers of additional services which might otherwise be established on the channel.

54. If allocations questions could be decided solely on the basis of engineering calculations of deficiencies of the present clear channel service and of the service gains which might be achieved, we think the present record would support the authorization of higher power for half of the 24 Class I-A stations and duplication of unlimited time assignments on the remaining 12 Class I-A channels. Higher power, so employed, would make it possible to provide a minimum of four Type E skywave services throughout the United States (except small areas in northwest Washington and southeast Florida, which have groundwave service). This would substantially improve present skywave services throughout most of the present white areas, extend daytime primary service into some areas now lacking it, and generally improve the signal-to-interference ratio throughout the present primary and secondary service areas of the 12 stations operating at 750 kw. The channels and modes of directional operation most suitable to higher power appear to be the following:

Frequency	Directional Operation	Location
640 kc	(DA-1) major lobe to NNE	Los Angeles, California
650 kc	(DA-N) major lobe to SE	Nashville, Tennessee
700 kc	(DA-1) major lobe to S	Cincinnati, Ohio
750 kc	(DA-N) major lobe to S	Atlanta, Georgia
760 kc	(DA-1) major lobe to W	Detroit, Michigan
820 kc	(DA-N) major lobe to W	Dallas/Ft. Worth, Texas
830 kc	(DA-N) major lobe to W	Minneapolis, Minnesota

[17]

Frequency	Directional Operation	Location
840 kc	(DA-N) major lobe to SE	Louisville, Kentucky
870 kc	(DA-1) major lobe to N	New Orleans, Louisiana
1040 kc	(DA-1) major lobe to W	Des Moines, Iowa
1160 kc	Omnidirectional	Salt Lake City, Utah
1200 kc	(DA-N) major lobe to NNW	San Antonio, Texas

55. An analysis of the circumstances affecting the remaining 12 Class I-A clear channel stations indicates that, on balance, it would be preferable to maintain the present 50 kw maximum power and to assign additional unlimited time stations on the lines of the following plan:

(a) On the following five frequencies, assign a new Class I station in the designated state, and require both the new and existing Class I station to directionalize their operations so as to afford each other mutual protection:

[18]

Frequency	Class I Present Assignment	Class I New Assignment
660 kc	New York	Montana
770 kc	New York	(Undetermined)*
880 kc	New York	Wyoming
1100 kc	Cleveland	Arizona
1180 kc	Rochester	Idaho

*See paragraphs 71 to 73

(b) On the following seven frequencies, retain the present maximum 50 kw power and assign unlimited time Class II stations in underserved areas:

Frequency	Class I Present Assignment
670 kc	Chicago, Illinois
720 kc	Chicago, Illinois
780 kc	Chicago, Illinois
890 kc	Chicago, Illinois
1020 kc	Pittsburgh, Pennsylvania
1120 kc	St. Louis, Missouri
1210 kc	Philadelphia, Pennsylvania

56. A number of basic factors determined the selection of the 12 channels designated above for duplicated unlimited time co-channel assignments. The Class I-A stations concerned are located chiefly at or close to the northern and eastern boundaries of the country. This circumstance affords the maximum opportunities for the assignment of additional unlimited time co-channel stations in the western part of the country where deficiencies in present service and the corresponding need for improvement are the greatest. In the areas where directionalization would eliminate primary or skywave service now rendered by the Class I-A station, there are generally abundant services of good quality from numerous other stations. Thus, the service gains to the needful areas of the West would not be achieved at the cost of destroying badly needed services in the areas the present stations would cease to serve owing to directionalization. In those cases where directionalization of the present Class I-A station would be required, it would improve service in the direction of the major lobes of the directional patterns. Higher power on the twelve channels listed above would generally produce appreciably less service gains in needful areas, and would create more severe problems of interference to both domestic and foreign stations than would higher power on the twelve channels listed in paragraph 54.

[19]

57. Having thus selected twelve channels, listed in paragraph 55, on which additional unlimited time stations could usefully be authorized, the question remains whether the new stations should be assigned as Class I or Class II stations. New skywave services on these channels could be obtained only by assigning new Class I co-channel stations protected by directionalizing the present Class I station. New co-channel Class II stations required to protect the present Class I station could provide a new primary or groundwave service, but no skywave service. While this argues for new Class I assignments on as many as possible

of the twelve channels listed in paragraph 55, certain offsetting considerations must be taken into account, such as resultant losses of service which would be caused by directionalizing the existing Class I station.

58. In formulating the proposals outlined for the twelve channels covered in paragraph 55, under which five of the existing Class I-A stations would be required to directionalize, while seven would continue to operate as at present, we have taken into account the following factors:

(a) Possible gains in skywave and primary service in needful areas in the west.

(b) Resultant losses of service caused by directionalizing existing Class I-A stations.

(c) The extent of other services available in areas lost to existing stations through directionalization.

(d) Service gains obtainable through directionalization of the existing stations.

(e) Resultant interferences to existing U. S. co-channel and adjacent channel stations.

(f) Requisite protection to foreign stations.

The varying circumstances of each of the twelve channels listed in paragraph 55 are such that in no case do all of the individual factors set out above point conclusively to Class I or Class II status for the new co-channel stations. Prolonged study of all these channels has, however, led us to the conclusion that, on balance, the reallocations outlined in paragraph 55 and discussed in more detail hereinbelow, represent optimum improvement obtainable through the assignment of additional co-channel and adjacent channel unlimited time stations on the twelve channels selected for duplication at this stage. Parties to this proceeding will have the opportunity to comment in support of or in opposition to the specific reallocations proposed, and to suggest such revisions as may appear desirable.

59. In the case of the seven channels listed in paragraph 55 (b), the balance of all the relevant considerations points, in our opinion, to retention of the present mode of operation of the existing Class I-A stations. They would receive protection by newly assigned co-channel Class II unlimited time stations equivalent to what is now afforded Class I-B clear channel stations. This would insure continued service throughout the wide areas where these stations render a usable signal. Such service as these stations may now render in areas beyond the contours which would be protected under this plan is generally not of good quality. Moreover, the peripheral areas involved generally receive adequate to abundant service from other stations. It seems to us justified to sacrifice this peripheral service, if the new stations can be assigned so as to provide primary service where there is now none.

60. In assigning Class II unlimited time stations to these channels, it will be important to bear in mind that they are being made available for new stations in areas which have no primary service. For this reason we do not propose to make the new Class II assignments in cities or areas now receiving numerous services, but would keep them available for new stations located where they could place a first primary service in white areas.

FM Broadcasting

60 (a) At an early stage of the proceeding preliminary evidence was received on a proposal by CBS for complete nationwide network coverage through the combined use of FM and standard broadcast stations. Subsequently, however, under a ruling adopted in October, 1947, evidence relating to FM broadcasting was excluded on the ground that the scope of the present proceeding was confined to standard broadcasting. In reaching the tentative conclusions stated herein on the basis of the record before us, we are not unmindful of the fact that FM radio is making contributions of mounting significance to the nation's aural broadcast service, and we would not wish, by any

decisions taken in the instant proceeding, to place any undue obstacles in the way of continued development and evolution of the FM service. We believe none are involved in the action here proposed. It is confined to the Class I-A clear channels which would continue to be needed for wide area service under any foreseeable developments affecting the wider utilization of FM radio.

Appropriate Further Steps at this Stage of the Proceeding

61. As discussed earlier, we believe that progress in reaching final decision in this proceeding can best be facilitated by inviting interested parties to direct their further comments to those types of clear channel reallocations which appear to offer most realistic opportunities for improving the standard broadcast service. For the reasons discussed in paragraphs 51 to 60, it appears that the optimum improvement which it would be practicable to achieve on the basis of technical considerations alone would be to implement a plan which would utilize both higher power and duplication, in accordance with the varying circumstances of the individual Class I-A channels.

[21]

62. In our opinion, however, many of the arguments formerly used in support of the authorization of higher power for clear channel stations need to be reconsidered in the light of the vast changes which have taken place in the standard broadcast industry since the present record was compiled. We are certain that there has been little change in the showings made on the present record, based on engineering calculations, of the available services and of the service improvements which could be effected through the use of higher power. We believe, however, that the drastic changes which have occurred in the broadcasting industry may have a very substantial bearing on other, non-technical considerations affecting the use of higher power for Class I-A clear channel stations.

63. Although the question of higher power needs careful reconsideration in the light of present day conditions, we believe that it

would needlessly retard progress toward the improvement of service on the clear channels if we attempted at this stage to give our attention simultaneously to the problems associated with both higher power and duplication. The record of this proceeding has already grown so unwieldy that repeated attempts on the part of the Commission to reach decisions encompassing the whole scope of the original eleven issues have failed until now to produce decisions which a majority of the Commission were prepared to support. We think it desirable, without losing sight of the inherent inter-relationships between the problems of higher power and duplication, to concentrate our attention on them one at a time, and to deal first with the possibilities for achieving service gains through the implementation of a scheme of duplication of unlimited time assignments on Class I-A channels on the lines of the plan briefly summarized in paragraph 55, and more fully described in paragraphs 68 to 77.

64. In deferring at this time active consideration of the problems involved in the authorization of higher power on the remaining twelve Class I-A frequencies, we do not foreclose an opportunity for a thorough examination of that subject later. We are unable to find sufficient justification, in any event, for authorizing higher power on the 12 frequencies on which we propose to consider additional unlimited time assignments. Preservation, in the interim, of the status quo, on the 12 frequencies listed in paragraph 54, would therefore leave unimpaired such opportunities as may exist for the fruitful use of higher power for Class I-A stations.

65. For these reasons, the further proceedings instituted herein will be confined at this stage to an examination of the problems, advantages, and disadvantages of the assignment of additional unlimited time stations on the 12 frequencies already referred to. Before proceeding to a detailed statement of the plan on which comments will be invited, it is appropriate at this point to indicate our views concerning the eleven issues originally designated in this proceeding, taking into account the tentative conclusions already discussed.

The Original Eleven Issues of This Proceeding

66. For the reasons discussed so far in this Notice and the further proceedings initiated herein, we have reached the following conclusions concerning the eleven issues originally designated in this proceeding.

Issue Number 1:

> "(1) What recommendation concerning the matters covered by this order the Commission should make to the Department of State for changes in provisions of the North American Broadcasting Agreement.

This issue can be treated as moot. The specific occasion for it — renegotiation of the North American Regional Broadcasting Agreement of 1941 — has long since passed. Moreover, the reallocations proposed herein are consistent with the still unratified North American Regional Broadcasting Agreement of 1950.

Issue Number 2:

> "(2) Whether the number of clear channels should be increased or decreased and what frequencies in the standard broadcast band shall be designated as I-A channels and as I-B channels.

There is no practicable basis for increasing the number of clear channels. We conclude that it would not be in the public interest to decrease the number of clear channels, since much needed improvements in wide area service to regions lacking in groundwave service can be achieved only by clear channel stations adequately protected against interference. We conclude that this need requires that all the frequencies now classified as clear channels remain so classified. Moreover, we propose retention of the present designations of the Class I-A and Class I-B channels. We do look toward the removal of nighttime exclusivity on 12 designated Class I-A channels, and the assignment of an additional Class I station on five of these 12 channels. However, while in certain respects the new assignment rules for these channels would be similar to those governing station assignments on Class I-B channels, we do not propose their reclassification as I-B channels. The Class I-A designation would be retained, consistently with their classification under NARBA as U. S. Class I-A channels entitled to the higher degree of protection foreign countries have agreed to provide on the Class I-A channels, as compared with the lesser protection required on the Class I-B channels. (While the precise formulation of revised rules need not be decided at this stage, it may be desirable, while retaining Class I-A classification for these channels, to create subordinate classifications depending on whether new co-channel unlimited time assignments would be confined to Class II stations, or would include an additional Class I station, with mutual protection by both the new and existing Class I station).

[23]

Issue Number 3:

> "(3) What minimum power and what maximum power should be required or authorized for operation on clear channels.

For the reasons already discussed, we believe a maximum power of 50 kw should be retained for the Class I stations on the following clear channels:

660 kc
670 kc
720 kc
770 kc
780 kc
880 kc
890 kc
1020 kc
1100 kc
1120 kc
1180 kc
1210 kc

Consideration of the possible advantages and disadvantages of authorizing higher power on the following frequencies is being deferred at this time:

640 kc
650 kc
700 kc
750 kc
760 kc
820 kc
830 kc
840 kc
870 kc
1040 kc
1160 kc
1200 kc

[23]

Issue Number 4:

"(4) Whether and to what extent the authorization of power for clear channel stations in excess of 50,000 watts would unfavorably affect the economic ability of other stations to operate in the public interest.

The outdated record of this proceeding affords an inadequate basis for sound judgments on this issue under the changed conditions in the radio broadcasting industry. Further consideration will be deferred to such time as the Commission may decide to institute further rule making on the authorization of higher power on some of the Class I-A clear channels.

Issue Number 5:

"(5) Whether the present geographical distribution of clear channel stations and the areas they serve represent an optimum distribution of radio service or whether the fair, efficient, and equitable distribution of radio service among the several states and communities specified in Section 307(b) of the Communications Act requires a geographical redistribution at this time.

The present record indicates the desirability of examining such geographical redistribution of such clear channel assignments as may be achieved in the plan on which further rule making is initiated herein.

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Issue Number 6:

"(6) Whether it is economically feasible to relocate clear channel stations so as to serve those areas which do not presently receive service.

The record fails to support the desirability of outright relocation of clear channel stations in the sense of shifting the present Class I assignment from the present city to a new city and eliminating the present assignment appears neither desirable nor feasible. On the other hand, redistribution of Class I clear channel assignments to the extent envisaged in the rule making proposal initiated herein does appear to merit consideration.

Issue Number 7:

"(7) What new rules or regulations, if any, should be promulgated to govern the power or hours of operation of Class II stations operating on clear channels.

Proposals for amendments to the rules covering the powers and hours of operation of Class II daytime stations are before us in separate rule making proceedings on the daytime skywave problem (Docket No. 8333) and the problem of extended hours for daytime broadcasters (Docket No. 12274). Decisions will be reached in those proceedings with due regard for the major policy decisions reached in the instant clear channel proceeding.

Issue Number 8:

"(8) What changes the Commission should order with respect to geographical location, frequency, authorized power or hours of operation of any presently licensed clear channel station.

Final decisions concerning modification of outstanding licenses will be deferred pending the conclusion of rule making on the allocations issues.

Issue Number 9:

"(9) Whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas.

The Listener Surveys whose results are spread on the record of this proceeding are too outdated to provide a sound basis for judgment on this record.

Issue Number 10:

"(10) The extent to which the service areas of clear channel stations overlap and the extent to which this involves a duplication of program service.

The information on the record concerning duplication of program service is too outdated to provide a sound basis for judgment at this time.

Issue Number 11:

> "(11) What recommendation, if any, the Commission should make to the Congress for the enactment of additional legislation on the matters covered by this Order."

The Commission possesses the requisite statutory power to implement the reallocations proposed herein and enactment of additional legislation is, accordingly, not required.

Rule Making Proposal

68. We have summarized in paragraph 55 a plan for the assignment of additional unlimited time stations on 12 of the clear channels. On five of these — 660 kc, 770 kc, 880 kc, 1100 kc and 1180 kc, that plan contemplates the assignment, in specified western states, of a new Class I station and the mutual protection of both the new and the existing Class I station by directionalization. On seven other Class I-A frequencies — 670 kc, 720 kc, 780 kc, 890 kc, 1020 kc, 1120 kc, and 1210 kc — it is proposed to permit the present Class I-A station to continue to operate as at present, and to assign to those frequencies additional unlimited time Class II stations which would be required to protect the present Class I-A station in a manner comparable to the requirements for protecting Class I-B stations under the present rules. On all 12 of the foregoing frequencies the present Class I station would continue to operate at 50 kw maximum power. The new Class I stations in the first group would also be permitted to operate at power of 50 kw. The daytime and nighttime powers of the Class II stations assigned to the remaining seven of these frequencies would be determined as at present for Class II stations.

69. Several reasons underlie the designation of specific states for the assignment of a new Class I station. The first reason is procedural. It is desirable to simplify, so far as possible, the procedural

steps necessary to implement the plan, and to minimize the time necessary to accomplish this. The record of this proceeding -- and in particular the depictions of existing skywave services in white areas clearly supports the desirability of assigning new Class I stations in the states designated in paragraph 55. Thus, there is no need for the excessively complicated comparative hearings which would be necessary if the channel were opened up for mutually exclusive applications throughout the entire wide area in which Class I co-channel assignments might otherwise be possible.

70. The individual states designated for the assignment of new Class I stations have been tentatively chosen, with the general directional antenna characteristics that are required in mind, principally upon the basis of the optimum location for improvement of secondary service in western areas where it has to be relied on most. Additionally, the choice of locations is supported by the record as in compliance with the requirements of Section 307 (b) of the Act for fair, efficient and equitable distribution of radio service among the several states and communities.

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71. It should be noted that in the case of one channel - 770 kc - we have not designated the state in which the new Class I station would be assigned. This frequency, on which a Class I-A station is presently assigned to New York City, is involved in a separate, adjudicatory proceeding (Dockets Nos. 6584 and 6585), in which there is at issue the question of whether Station KOB at Albuquerque, New Mexico, should be licensed to operate as an unlimited time station on 770 kc or on 1030 kc (on which at present a Class I-B station is assigned to operate at Boston, Massachusetts). Under Section 3.25(b) of the present rules, the assignment of a co-channel unlimited time station is permissible on 1030 kc. Thus, a decision in the above-referenced adjudicatory proceeding to assign KOB to that channel would not require reclassification of 1030kc.

Section 3.25(a) of the Rules, on the other hand, does not at present contemplate the unlimited time operation of another station on 770 kc. Accordingly, the question of whether the allocations rules governing the use of 770 kc should be amended to permit the assignment of a co-channel unlimited time station at Albuquerque is also at issue in the KOB proceeding.[2/]

72. The Commission cannot properly anticipate in the instant proceeding the decision it will reach in the KOB adjudicatory proceeding. We note, however, for the purposes of the instant rule making proceeding, that the assignment of KOB to either 770 kc or 1030 kc would be fully consistent with the general scheme of reallocations proposed herein. As stated above, the use of 1030 kc, which is a Class I-B channel, is permitted under the present rules. Alternatively, the use of 770 kc for an unlimited time station at Albuquerque would help to implement the objectives of the scheme of reallocations proposed herein in a manner consistent with the action contemplated for the other Class I-A channels, particularly those similarly situated in the northeastern portions of the United States.

73. In these circumstances, taking into account the special problems growing out of the history of the KOB proceeding, we go no further in the instant proceeding at this stage, than to note the desirability of assigning a new Class I station on 770 kc in a western state where the need is greatest for such a new assignment, and where it would be sufficiently removed from New York to minimize loss of service from directionalizing the present New York station. We leave for determination in the KOB adjudicatory proceeding the question whether KOB should be licensed to operate unlimited time at Albuquerque on 770 kc or on 1030 kc, and under what conditions. Should it be decided in the KOB proceeding that it would be preferable to license KOB for unlimited time operation on 1030 kc, it would then be appropriate, and consistent with the reallocations proposed herein, to make 770 kc available for assignment in some other western city, and we herein propose to do so in that eventuality. Conversely, if 770 kc were selected for Albuquerque, 1030 kc remains

available under the existing rules for a similar Class I assignment elsewhere.

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[2] KOB is presently operating unlimited time on 770 kc under special authority.

[27]

74. The assignment of Class II unlimited time stations to 660 kc, 770 kc, 880 kc, 1100 kc, and 1180 kc would necessarily have to be deferred until a determination has been made of the precise location and specific operating conditions of both the new and existing Class I stations on each of these channels. Until this is done it would not be possible to determine precisely what Class II stations and what mode of operation would ensure the requisite protection to the dominant Class I stations on these channels. This proposal contemplates, however, that when the precise location of the new Class I stations and specific operating conditions of both the new and existing Class I stations are determined, applications would at that stage be accepted for Class II unlimited time stations on these five channels.

75. With respect to the assignment of Class II stations to 670 kc, 720 kc, 780 kc, 890 kc, 1020 kc, 1120 kc, and 1210 kc, we find that directionalization of the eastern station to the extent necessary to establish a useful skywave service in the west would be at the sacrifice of primary coverage in eastern areas where there is a definite deficiency of primary service. We thus find it appropriate to require protection of the extended primary coverage now given by the existing stations involved. It follows that the western usage must be confined to Class II assignments, i.e., stations providing protection to the eastern Class I station, and at the same time subjected to interference from the Class I stations to the extent of eliminating skywave coverage. Such duplicate operation is consistent with our objective only if it results in the addition of primary service to areas where such service is deficient or lacking entirely. Accordingly it is our purpose to elicit specific proposals

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concerning possible station assignments which would supply primary service to areas not now receiving such service. If there are indications of potential station assignments of this nature, Commission rules would be appropriately amended to make these channels available for that express purpose. If, in this proceeding or under the anticipated rule change applications consistent with these tenets are not forthcoming, the channels in question would be the subject of further consideration.

76. The processing of applications for new and expanded daytime facilities on the twelve Class I-A channels in question should be deferred until reasonable opportunity has been provided for the assignment of unlimited time Class II stations on these channels. It is not possible at this time to anticipate with exactitude the date when it will be appropriate to permit the assignment of new daytime Class II stations on these channels. Such action would, accordingly, be deferred until a later stage when the pattern of new Class II unlimited time assignments on these channels has become sufficiently crystallized to insure that the assignments of new daytime stations would

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not unreasonably block opportunities for the assignment of Class II unlimited time stations meeting the above-stated requirements.

77. Owing to the fact that we have decided to maintain the status quo on the twelve other Class I-A frequencies on which the possible consideration of higher power is being reserved until later, i.e., 640 kc, 650 kc, 700 kc, 750 kc, 760 kc, 820 kc, 830 kc, 840 kc, 870 kc, 1040 kc, 1160 kc, and 1200 kc, it will not be appropriate, pending such action, to clutter those frequencies with daytime assignments which would tend to prejudice such consideration as it may later be desirable to give to proposals for increased power.

78. Any interested party who is of the opinion that the proposals set out in Paragraphs 55 and 68 to 77 of this Notice should not be adopted,

or should not be adopted in the form set forth herein, may file with the Commission on or before July 15, 1958, a written statement or brief setting forth his comments, together with supporting data. Comments and data in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 45 days from the last day for filing said original comments. No additional comments may be filed unless (1) specifically requested by the Commission or (2) good cause for the filing of such additional comments is established.

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79. In accordance with the provisions of Section 1.54 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs or comments shall be furnished the Commission.

80 Authority for the adoption of amendments to the rules embodying the proposals set out herein is contained in Sections 4 (i), 301, 303 (a), (b), (c), (d), (f) and (r) and 316 (a) of the Communications Act of 1934, as amended.

Disposition of Recent Pleadings

81. Pursuant to the foregoing, IT IS ORDERED, That the petition filed by the Clear Channel Broadcasting Service on November 16, 1956, IS GRANTED to the extent consistent with the further rule making initiated herein and IS DENIED in all other respects. IT IS ORDERED FURTHER, That the petition filed in this proceeding by Albuquerque Broadcasting Company on December 28, 1956, referred to in paragraph 29, IS DENIED.

82. One other group of recent pleadings not previously referred to herein requires disposition. On December 19, 1957, Everett L. Dillard, trading as Commercial Radio Equipment Co., licensee of WDON, a Class II daytime station operating on Class I-B Channel 1540 kc with a power of 250 watts, filed a petition (bearing Dockets Nos. 6741 and 8333) requesting that the Commission institute proceedings to amend the rules

so as to delete 1540 kc from Section 3.25 of the rules, thereby terminating the present classification of this frequency as a Class I-B channel. The petition also requested that Station KXEL, now assigned to Waterloo, Iowa as a Class I-B station on 1540 kc, be reclassified as a Class II station, pursuant to Section 3.182 (4) (b) of the rules concerning automatic reclassification of standard broadcast stations. (A grant of the above-requested amendment to Section 3.25 would invoke the same reclassification of KXEL to Class II status, although on other grounds). The petition requested finally, that these actions be considered separately from the instant Clear Channel proceeding and the Daytime Skywave proceeding (Docket No. 8333). Comments supporting this petition were filed on April 3 and April 8, 1958, respectively, by La Porte Broadcasting Co., Inc., licensee of WLOI, a Class II daytime station operating on 1540 kc assigned to La Porte, Indiana, and Dalworth Broadcasting Company, Inc., licensee of KCUL, a Class II unlimited time station assigned to Fort Worth, Texas.

83. For reasons discussed in paragraph 47 hereof, we found, on the basis of this record, that it would be undesirable to make any general reallocation of the Class I-B channels. The WDON petition raises questions arising out of special circumstances affecting 1540 kc in particular. For this reason, it is appropriate to deal with that petition separately, and not within the context of this proceeding, which is concerned with broader aspects of clear channel reallocation. We do not, therefore, rule on the foregoing petition herein, but will consider and decide it separately, with due regard for the broad policy decisions reached in the instant proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Mary Jane Morris
Secretary

Adopted: April 15, 1958

Released: April 15, 1958

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COMMENTS AND EXCEPTIONS BY WESTINGHOUSE BROADCASTING COMPANY, INC.

Comes now Westinghouse Broadcasting Company, Inc., by its attorney, John W. Steen, and herewith submits its comments pursuant to the Public Notice of Proposed Rule Making released April 15, 1958. Westinghouse Broadcasting Company, Inc. (hereinafter called "WBC") is the licensee of Station KYW, 1100 kc, Cleveland, Ohio, Station KDKA, 1020 kc, Pittsburgh, Pennsylvania, and Station WBZ, 1030 kc, Boston, Massachusetts. These stations are the only ones operating full time on these frequencies. In the referenced Notice, the Commission proposed to assign an additional Class I station to the frequency 1100 kc for location in Arizona and additional Class II stations to the frequency 1020 kc [§ 55(a) and (b)].

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The Notice [§ 71-72-73] describes the long-pending adjudicatory proceeding at Dockets Nos. 6584 and 6585 involving KOB, WABC, and WBZ, and suggests, in the alternative, uses of the frequencies 770 kc and 1030 kc.* WBC, therefore, is a party in interest.

1. The Commission finds that:

> "The essential question in this proceeding is whether and in what manner it may be desirable to amend the rules governing the use of standard broadcast frequencies designated as 'clear channels'."

The first and most important question which the Commission must determine in connection with its study of clear channels is the part they will play in national defense communications in the event of a sudden attack by a foreign power. Certain basic facts may be controlling insofar as the public interest in preserving clear channels for disaster communications purposes is concerned. More than 50 percent of the land area of the United States containing about 12 percent of the population is dependent upon skywave service which is available only through clear channel stations. The 40,000,000 automobile radios and the 11,500,000 portable radio

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* The uncertainties expressed in these paragraphs have been eliminated by the release of the Commission's instructions to its staff to prepare a final decision placing KOB on 770 kc.

receivers, not requiring a central source of power, will prove to be a communication asset of unlimited value in the hands of the American public, particularly in major metropolitan areas (which are most vulnerable to attack) if skywave service from distant points remains available. Such dependence by the public is an annually recurring experience in times of hurricanes, tornadoes, and floods and, of course, would assume critical proportions in the event of war. WBC Stations have many times played an important role in wide area communication service during times of disasters and, to be always ready to render such service, maintain emergency stand-by power sources independent of the local utilities. WBC respectfully submits, particularly in light of current world tensions, that the Commission first study and evaluate the importance of clear channel stations and their function in a disaster communications service before any attempt is made in these proceedings to determine whether or not, in day-to-day living, their value is now of sufficiently less importance than heretofore that they can be broken down in some manner.

2. WBC agrees with the Commission that much of the 1947 evidence "owing to the lapse of ten years and the substantial changes in the interim, has little present value" and regrets that the time limit for filing comments has not permitted the completion of new

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engineering studies to the depth of detail that were produced by the Commission and the Industry at the hearings in 1946 and 1947 through the work of the four Government-Industry Committees established in March and April of 1945. However, WBC has undertaken, within the time allowed, some very limited engineering studies and submits these initial comments on the basic aims outlined by the Commission in the current Notice and on the implementation thereof by the proposed treatment of specific frequencies listed in ¶ 54, 55(a) and (b) and 73. The WBC studies are continuing and, therefore, the right is reserved to supplement, modify or alter the position taken herein in the event that the final studies of WBC engineers and/or the information supplied by other parties to these proceedings, dictate.

3. Certain basic problems (assuming the Commission first finds that the communication needs of national defense are not controlling) will require information not presently available as a condition precedent to a sound solution to the problem of how to best use the clear channels in the public interest. Furthermore, certain conflicts between the announced aims and the proposed implementation of those aims appearing in the Further Notice of Proposed Rule Making must be eliminated by Commission decision prior to making a detailed finding of wherein lies the public interest.

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Such material can be obtained and WBC firmly believes that the Commission will find an Industry cooperative response equal to that demonstrated in 1945, 1946 and 1947 in the event it elects to again form appropriate Government-Industry Committees and charge them with making such a study. WBC believes modernization of the record is required by due process and will cooperate with such a committee.

4. As recognized by the Commission in the Notice, and by the Industry, the volumes of engineering studies compiled by the Government-Industry Committees prior to the hearings in 1946 and 1947 are now

substantially outdated by changes in the interval. Basic in these changes is an increase in the total number of stations from 900 to over 3300. This growth, among other things, changes the record statistics insofar as they dealt with populations in smaller communities as then "underserved" but now served by a local station.* Modernizing this record information is a condition precedent to a determination of the public interest since, aside from the statutory requirements of § 307(b), "public interest" can only be defined in terms of people. Although a current engineering study may again show that

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50 percent of the land area of the United States containing about 12 percent of the population is dependent upon skywave service only, nevertheless a basic determination preceding any destruction of existing skywave service, no matter how small the degree, necessitates a comparison between the number of people that will lose service and the number of people that will gain service, which comparison is equal to, if not greater importance than, a consideration of the land areas lost and gained.

5. A basic policy consideration facing the Commission and the Industry is set forth in ¶ 41 of the Notice:

> "There appear to be severe limits on the possibilities for reducing white areas by creating new groundwave coverage from new or expanded standard broadcast stations and it follows that improvement of service throughout most of the existing white areas must be provided, if at all, by new or improved skywave service."

However, the proposed Notice, in seeking a solution to the problem so clearly stated, appears to create an irreconcilable conflict. In ¶ 54, the Commission's Notice sets aside twelve channels as reserved for possible future use by stations operating with 750 kw of power on the theory that "the optimum improvement of service is achievable by a judicious combination of higher power and duplication of the Class I-A clear channels." The Notice proposes, however, that the

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* Local stations furnish only limited primary service and do not furnish skywave service.

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Commission will not at this time make such a decision. We, therefore, assume that for the foreseeable future these twelve Class I-A stations will continue to furnish only their existing 50 kw grade of skywave service.

6. The Commission correctly concludes that "the question of higher power needs careful reconsideration in the light of present day issues" and "that the drastic changes which have occurred in the Broadcasting Industry may have a very substantial bearing on other, non-technical considerations affecting the use of higher-power for Class I-A clear channel stations." WBC cannot agree, however, with the Commission's conclusion that this question can be set to one side and considered at a later date while proceeding now with the determination of the best method to break down the remaining twelve channels. To do so will not assist the Commission in reaching a sound conclusion in the public interest of the basic problem "that the optimum improvement of service is achievable by a judicious combination" of 750 kw of power for some and duplication of other clear channels. If there be any solution to the problem in such a combination, it is impossible to sever the problem and delay the solution of the major portion thereof because, to do so, makes the wisdom of the solution of the remaining portion totally dependent upon, at a later date, the nature of the solution of the first half of the combination.

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7. In ¶ 55, the Notice proposes to take the remaining twelve Class I-A clear channels and substantially reduce their skywave service now being rendered by either (a) placing additional Class I-B's on these

frequencies (five), or (b) adding additional Class II stations (seven). Therefore, at the conclusion of the present proceedings, assuming the rules are adopted as proposed, the public would find that the Commission had reduced the present skywave service of half of the present clear channel stations but had not, to compensate for that loss, provided a superior skywave service on the remaining twelve channels. And, of even more serious consequence, the public in the underserved areas may find this loss to be permanent in the event that the Commission, as a result of its later consideration of the use of 750 kw of power, decides, for non-engineering reasons, not to authorize such operation. Further, the existing Senate resolution opposing power above 50 kw may require modification in order to prevent the loss of skywave service being permanent. Such a risk would not be in the public interest and for that reason WBC is opposed to considering only half of the problem.

8. Preliminary Westinghouse engineering studies indicate that if the Commission, in ¶ 55, is seeking a compromise between additional skywave service and additional primary service, it is

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questionable that the proposal will make any substantial contribution of new primary services in the present nighttime white areas. The Commission finds [¶ 38] that the old record shows about one-half the land area without nighttime primary services and adds "The increment, meanwhile, of nearly 2,000 additional standard broadcast stations appears to have reduced the nighttime white areas only to a minor extent." Of the "nearly 2,000 additional standard broadcast stations", WBC finds that some 770 are full-time assignments. Under the present proposal approximately one-tenth as many might be assigned as new, unlimited Class II stations. Prior to doing so, however, the Commission will need assurance that the additional 77 stations can reduce the nighttime white areas to a significant extent, especially in light of its current finding that the 770 stations reduced it "only to a minor extent".

9. Attached hereto in the engineering statement is a tabulation of communities west of the Mississippi River, with populations for each, in which there are located daytime radio facilities only and which have no nighttime service of local origin. In light of the Commission's statement [¶ 60] that the new Class II assignments would be located where they could place a first primary service in white areas, it will be generally conceded that these towns are the only ones where [151] full-time facilities might be assigned. WBC recognizes that "there are still large areas of the continental United States which have no radio service during the day and no primary radio service at night", but the attached tabulation of communities raises a serious question of the ability of any of these communities to support a full-time station. Consequently, WBC believes that, prior to creating the proposed losses of service in order to make the proposed allocations, a study must be made to determine that the proposed gains would be more in the public interest than the proposed losses of service.

10. Although the additional I-B's on the five frequencies listed at ¶ 55(a) would produce five new sources of skywave service, it is doubtful that the total added service, when netted against the loss suffered by the existing stations which would be required to directionalize, will result in an overall gain in skywave service rendered by these channels. Such a conclusion can only be based upon studies not presently available to WBC but which could be made for all channels involved by an Industry-Government Committee.

11. In addition to the net loss of skywave service which will result at the conclusion of the present proceedings, of the five stations proposed in ¶ 55(a) as required to install directional antenna, and the treatment of 1030 kc suggested in ¶ 73, WBC preliminary engineering studies hereto attached indicate that in one case there will be a

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substantial loss of the only primary service being rendered to a densely populated area and in at least one other case will result in a loss of one out of only two primary services presently available. WBZ, Boston, Massachusetts, (operating on 1030 kc, proposed in ¶ 73 as available for a Class I assignment elsewhere) furnishes the only primary service to an area of 4,579 square miles having a population of 219,773. KYW, Cleveland, Ohio, (operating on 1100 kc), is furnishing the only primary service to an area of 1,460 square miles and a population of 114,198 and one of only two such services to an area of 5,325 square miles and a population of 279,954. Engineering studies of the other proposed channels may indicate similar losses of the only or a limited number of existing primary services but time has not permitted completion. WBC believes this information as to all channels is a prerequisite to due process in these proceedings and that the present record is too "stale" to support any finding on this issue.

12. The proposed Notice [¶ 55] indicates that the Commission is seeking the creation of improved skywave service in areas where those services are now most deficient by the use of 750 kw power where such power will not cause excessive interference to other U. S. or foreign stations. The implementation of this policy, as proposed

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in ¶ 54, however, raises questions requiring further study:

A. Five of the twelve frequencies reserved for possible future super-power are located in the eastern part of the United States and many of them are located within a few hundred miles of each other. Will the clustering of these stations at these particular locations necessarily result in the most efficient use of the frequencies if the basic purpose is to create improved skywave service to the underserved areas of the west? Will not these stations so located (two to three sun hours east of the underserved area) be required to operate almost twenty-four hours per day to give skywave service?

B. The proposed Notice, in dealing with the possibility of future operations at 750 kw, does not indicate whether or not such stations will be required to use an antenna which will maximize skywave radiation [¶ 46]. Would not the most effective use of 750 kw power to reduce "white areas" be to utilize antenna designs that will maintain the present 50 kw groundwave service and direct all of the increase in power into skywave signal?

C. A 750 kw powered station will involve an initial capital outlay of over one-half million dollars and an increased annual operating expense of more than one quarter million dollars. Is such an operation economically feasible at the present time?

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13. In ¶ 58 the Commission states:

"In formulating the proposals outlined for the twelve channels covered in ¶ 55, under which five of the existing Class I-A stations would be required to directionalize, while seven would continue to operate as at present, we have taken into account the following factors: (underscore added)

"(a) possible gains in skywave and primary service in needful areas in the west;

"(b) resultant losses of service caused by directionalizing existing Class I-A stations;

"(c) the extent of other services available in areas lost to existing stations through directionalization;

"(d) service gains obtainable through directionalization of existing stations;

"(e) resultant interference to existing U.S. co-channel and adjacent channel stations;

"(f) requisite protection to foreign stations."

WBC assumes the Commission is referring here to the information in the record of this Docket introduced at the hearings in 1946 and 1947. WBC has not been able, in the time permitted, to obtain current

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information on these issues as to the frequencies on which it is licensed to operate stations and respectfully submits that the evidence in the record of this Docket is not adequate to support any present findings or conclusions in light of the changes that have taken place in the intervening ten years since the record information was first gathered. WBC comments as to 1030 kc are set out below but we are unable to specifically comment as to either 1020 kc (KDKA) or 1100 kc (KYW) concerning the possible gains or losses in skywave or primary service in the east or at the location of the new stations as suggested in issues (a) through (d) in ¶ 58 above quoted. In the absence of such information, WBC does not believe that it would be in the public interest, or due process to existing licensees, for the Commission to enter an order requiring WBC to directionalize 1100 kc or an order permitting additional Class II stations to operate on 1020 kc. Such information could be obtained by a Government-Industry Committee for all channels involved by bringing up to date the evidence obtained in 1945 and, as stated above, WBC will cooperate with such a committee.

14. Within the period of time allowed to file these comments, WBC has not been able to complete its engineering studies of the

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complex problems raised by the Notice of Proposed Further Rule Making. Consequently, these initial comments are based upon studies, which although limited, indicate the existence of the problems above discussed and the necessity for procurement of additional information prior to reaching a final conclusion of wherein lies the public interest. The WBC studies are continuing and will include a study of the comments filed by other parties in these proceedings. Should this continuing study indicate to WBC that the public interest would be better served by making some specific changes in the present rules covering the use of clear channel frequencies, WBC will file reply comments (or petition the Commission for leave to file supplemental comments) in which WBC will propose such changes of these rules as to it, after further study, may then seem appropriate.

EXCEPTIONS RE 1030 KC

15. The Commission's discussion of the KOB case in the Notice of Proposed Rule Making [¶ 71-72-73] includes the following statements:

> "Under § 3.25(b) of the present rules, the assignment of a co-channel, unlimited time station is permissible on 1030 kc. Thus, a decision in the above referenced adjudicatory proceeding to assign KOB to that channel would not require reclassification of 1030 kc. . . ."

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> "As stated above, the use of 1030 kc, which is a Class I-B channel, is permitted under the present rules. . . ."

> "Conversely, if 770 kc were selected for Albuquerque, 1030 kc remains available under the existing rules for a similar Class I assignment elsewhere."

WBC takes exception to the above quoted statements and directs the Commission's attention to the fact that the said classification of 1030 kc as a Class I-B channel under § 3.25(b) of the present rules is subject to an outstanding protest by WBC; that WBC has never been granted the hearing on its protest as required by statute; and therefore the said classification of 1030 kc under this Section has not been finalized. Westinghouse also asserts that the status as a Class I-A unduplicated station which WBZ has enjoyed at all times since 1928 (except for a few months in 1941) cannot be modified so as to permit the simultaneous operation of any station on the same frequency as WBZ without first affording WBC the hearing required by § 316 of the Communications Act, which hearing it has requested, has not waived, and has not received. [Federal Communications Commission vs. National Broadcasting Company, Inc (KOA), 319 U.S. 239 (1943)]. That position is supported by the recent pronouncement of the Commission that:

> ". . . it would not be lawful for KOB to operate in accordance with its license on 1030 kc, with the
>
> [158]
>
> power authorized in such license, in view of the fact that such operation would cause substantial interference to Station WBZ and Station WBZ has never been afforded any hearing to determine whether such operation would serve the public interest." (underscore added) (Letter from the Commission to KOB, November 9, 1956, Public Notice 38480, Report No. 2944).

17. Therefore, for the reasons above expressed, supplemented by the additional facts presented to the Commission in the KOB case (Dockets Nos. 6584 and 6585) and incorporated herein by reference, Westinghouse Broadcasting Company, Inc., licensee of WBZ, Boston, Massachusetts, 1030 kc, respectfully submits that no additional full-time stations may be assigned to operate on 1030 kc until WBC has been granted the hearing required by the Act on its outstanding protest to the proposed reclassification of the frequency.

Respectfully submitted,

WESTINGHOUSE BROADCASTING
COMPANY, INC.

/s/ John W. Steen
Its Attorney

August 11, 1958
40 Wall Street
New York 5, New York

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VANDIVERE AND COHEN
Consulting Electronic Engineers
Washington, D. C.

ENGINEERING EXHIBIT SUPPORTING COMMENTS BY WESTINGHOUSE BROADCASTING COMPANY IN THE MATTER OF FURTHER PROPOSED RULE MAKING - DOCKET 6741

Engineering Statement

Summary

In the Further Notice of Proposed Rule Making, Docket 6741, mimeo 57,216, paragraph 55(a), it is proposed that a new Class I station be assigned to Arizona to operate on 1100 kc with KYW, Cleveland, Ohio, and that both stations directionalize their operations so as to afford each other mutual protection. In the following, there is given a study of the other nighttime primary services available in the area that would lose service from KYW as a result of such operation.

In paragraph 55(b) of the same Further Notice, it is proposed that KDKA, 1020 kc, Pittsburgh, Pennsylvania, continue its present operation but that unlimited-time Class II stations be assigned to operate on this frequency in under-served areas. Although it is not possible at this point to evaluate or comment in detail upon probable gains and losses that would result from such an assignment plan, some general comments of an engineering nature are offered which tend toward an evaluation of the probable gains.

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Other Services in the Area That Would Lose Service from KYW by the 55(a) Proposal

In the somewhat crescent-shaped general area shown in Figure 1, the western boundary is the KYW Type B nighttime contour for its present operation. The eastern boundary is the KYW Type B contour with radiations westward suitable for the protection of a Class 1B station in Arizona, or the shore of Lake Erie, whichever may be controlling. The general area is further subdivided by contours or portions of contours from other stations which divide the area into sub-areas having one service, two services, or three or more services, as indicated by the several kinds of cross-hatching. Regardless of the type of directional antenna used, the KYW Type B directional contour is rather precisely fixed at points generally westward by the permissible radiations toward the Arizona assignment. Such is not the case for points lying generally eastward, and the location of the Type B contour will depend upon the nature of the directional antenna assumed. Near the bottom of the figure, it will be noted that the Type B contour for the present operation does not intersect the Type B contour for directional operation, and an additional area of loss of service begins to be defined. This area has not been evaluated for other services, because it begins to enter the area of indefinite definition.

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Figure 2 shows the analysis of populations and areas involved in Figure 1. A list of the stations contributing other services in Figure 1 is given in Figure 3.

It is conceivable that there might be some increase of service to the east of KYW as a result of directionalization; but the amount, if any, cannot be assessed until the characteristics of the directional antenna are fixed in detail and especially, whether high efficiency Franklin elements might be used.

Possible Improvement of Coverage of White Areas by the Assignment of New Class II Stations

Before attempting to estimate the loss of skywave service that would result from the assignment of Class II stations to a clear channel, it appears reasonable to make a rough estimate of the extent to which improvements in white area coverage may be achieved by the assignment of such Class II stations. In order to attempt this, one needs first of all an estimate of the "market" for such stations. A simple list of place names in white areas seems hardly appropriate, because many communities cannot provide the necessary economic support for a broadcast station. A more practical list of white area communities to which Class II stations may be assigned is a list of such communities already having at least one daytime

facility. Figure 4 shows a list of communities west of the Mississippi River with daytime AM radio facilities only. Additional work would be necessary to segregate those communities which already have nighttime primary service so as to reduce the list to one of purely white area communities. Communities which are located within a metropolitan area have, however, already been deleted from the list on the assumption that such communities will have nighttime primary service.

For the 276 communities listed, the total population is 1,675,000. This results in an average population per community of 6,100; so, at this point, the typical "market" for a Class II white area station is a community of about 6,100 people. It is evident, however, that this average is too large: For, although a great many data and a great deal of time would be required for a thorough editing of the list of Figure 4 to a list of purely white area communities, it is evident to casual inspection that many of the communities would be dropped, that most of the larger communities would be dropped, and indeed that in some instances the entire listing for a state might be dropped.

If we suppose the typical community to be of about 6,000 population, it appears reasonable to suppose that only relatively low power and relatively simple directional antennas will be economically feasible for the white area Class II stations.

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If only relatively simple directional antennas are employed, then a likely number of Class II stations per channel is six or seven; thus we may arrive at an estimate of white area service gained per channel of about 40,000 to 45,000 persons in towns plus a moderate increment from the immediately surrounding rural areas. It appears that this is approximately the gain which is to be compared with the loss of skywave service which must accompany it.

However rough the considerations above might be, it is believed that they are genuinely pertinent to the problem of present concern and that they tend to substantiate or illustrate the hypothesis that a considerable portion of U. S. population is so thinly spread that for engineering-economic reasons it is virtually inaccessible to groundwave service at night.

It is remarked in the Further Notice that the nearly 2,000 additional standard broadcast stations assigned since approximately 1946 have reduced the nighttime white areas only to a minor extent. Figure 5 is a statistical tabulation of those stations of the nearly 2,000 which were authorized for nighttime operation. A total of 770 stations is approximately

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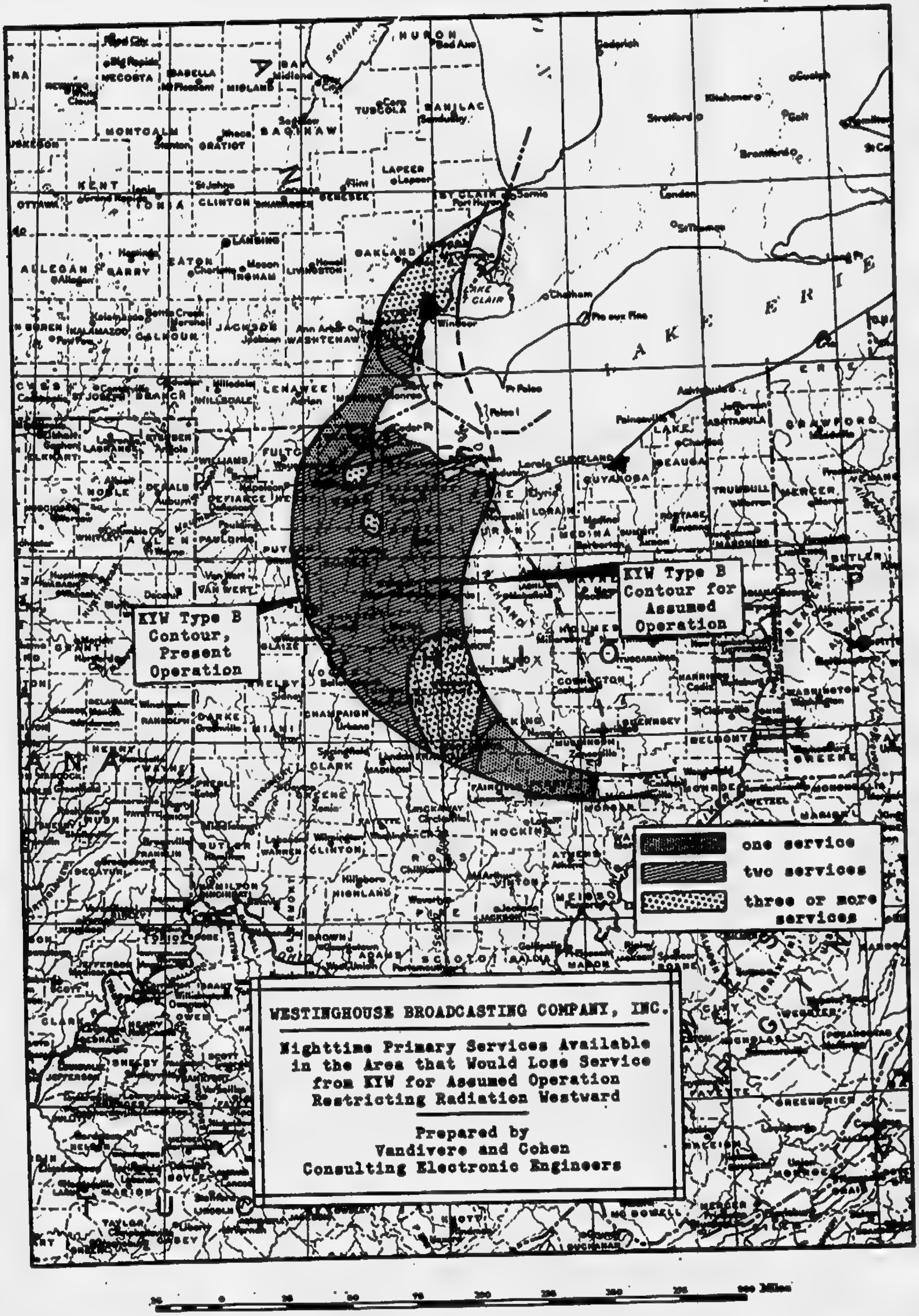
ten times the number of Class II stations presently proposed in the Further Notice.

/s/ Edgar F. Vandivere, Jr.
VANDIVERE and COHEN

[JURAT the 7th day of August, 1958.]

[Figure 1]



KYW Type B Contour, Present Operation
KYW Type B Contour for Assumed Operation
LAKE ERIE
LAKE ST. CLAIR
SAGINAW
HURON
TUSCOLA
SANILAC
MONTCALM
GRATIOT
SAGINAW
LAPEER
KENT
IONIA
CLINTON
SHIAWASSEE
GENESEE
ST CLAIR
OTTAWA
LANSING
OAKLAND
ALLEGAN
BARRY
EATON
INGHAM
LIVINGSTON
KALAMAZOO
CALHOUN
JACKSON
WASHTENAW
Windsor
Chatham
London
St Thomas
Kitchener
Guelph
Stratford
Galt
Brantford
Goderich
LENAWEE
HILLSDALE
BRANCH
ST JOSEPH
CASS
FULTON
WILLIAMS
DEFIANCE
PAULDING
VAN WERT
NOBLE
DEKALB
WHITLEY
Pelee I
CLEVELAND
CUYAHOGA
LORAIN
MEDINA
LAKE
ASHTABULA
GEAUGA
TRUMBULL
MERCER
CRAWFORD
PORTAGE
BUTLER
HOLMES
KNOX
TUSCARAWAS
COSHOCTON
HARRISON
GUERNSEY
BELMONT
WASHINGTON
GREENE
MUSKINGUM
MONROE
WETZEL
DARKE
SHELBY
CHAMPAIGN
MIAMI
CLARK
MADISON
FAIRFIELD
HOCKING
PICKAWAY
ROSS
ATHENS
VINTON
MEIGS
CLINTON
WARREN
BUTLER
HIGHLAND
PIKE
JACKSON
BROWN
ADAMS
SCIOTO
GALLIA
MASON
HENRY
WAYNE
RANDOLPH
DECATUR
FRANKLIN
HAMILTON
CINCINNATI
JEFFERSON
OWEN
SCOTT
SHELBY
BOYLE
TAYLOR
KNOTT
MC DOWELL
MERCER
FAYETTE
GREENBRIER
WEBSTER
BUCHANAN
25 0 25 50 75 100 125 150 175 200 Miles

▩	one service
▨	two services
░	three or more services

WESTINGHOUSE BROADCASTING COMPANY, INC.

Nighttime Primary Services Available in the Area that Would Lose Service from KYW for Assumed Operation Restricting Radiation Westward

Prepared by
Vandivere and Cohen
Consulting Electronic Engineers

Figure 2

ENGINEERING EXHIBIT SUPPORTING COMMENTS BY WESTINGHOUSE BROADCASTING COMPANY IN THE MATTER OF FURTHER PROPOSED RULE MAKING - DOCKET 6741

Nighttime Primary Services Available in the Area That Would Lose Service from KYW for Assumed Operation Restricting Radiation Westward

Populations and Areas

Number of Primary Services	Area (sq. mi.)	Population
1	1460	144,198
2	5325	279,954
3 or more	2400	182,045

Figure 3

ENGINEERING EXHIBIT SUPPORTING COMMENTS BY WESTINGHOUSE BROADCASTING COMPANY IN THE MATTER OF FURTHER PROPOSED RULE MAKING -- DOCKET 6741

Nighttime Primary Services Available in the Area That Would Lose Service from KYW for Assumed Operation Restricting Radiation Westward

List of Stations Considered

WLW	Cincinnati, Ohio
WJR	Detroit, Michigan
WTVN	Columbus, Ohio
WMNI	Columbus, Ohio
WWJ	Detroit, Michigan
WCAR	Detroit, Michigan
WIMA	Lima, Ohio
WCOL	Columbus, Ohio
WXYZ	Detroit, Michigan
WKMH	Dearborn, Michigan
WJLB	Detroit, Michigan
WFOB	Fostoria, Ohio
WLEC	Sandusky, Ohio
WBNS	Columbus, Ohio
WOHO	Toledo, Ohio
WMRN	Marion, Ohio

Figure 4
Sheet 1 of 7

ENGINEERING EXHIBIT SUPPORTING COMMENTS BY WESTINGHOUSE BROADCASTING COMPANY IN THE MATTER OF FURTHER PROPOSED RULE MAKING - DOCKET 6741

Communities West of Mississippi River With Daytime AM Radio Facilities Only

State	Community	1950 Population
Arizona	Casa Grande	4,181
	Holbrook	2,336
	Scottsdale	2,032
	Show Low	1,000
	Sierra Vista	*
Arkansas	Benton	6,277
	Blytheville	16,234
	Clarksville	4,343
	Crossett	4,619
	De Queen	3,015
	Fordyce	3,754
	Forrest City	7,607
	Harrison	5,542
	Magnolia	6,918
	Malvern	8,072
	McGehee	3,854
Arkansas continued	Marked Tree	2,878
	Monticello	4,501
	Morrilton	5,483
	Newport	6,254
	Osceola	5,006
	Pocahontas	3,840
	Rogers	4,962
	Searcy	6,024
	Siloam Springs	3,270
	Walnut Ridge	3,106
	Warren	2,619
California	Alturas	2,819
	Apple Valley	*
	Auburn	4,653
	Avalon	1,506
	Carmel	4,351

* Population unknown

Communities West of Mississippi River with Daytime AM Radio Facilities Only

Figure 4
Sheet 2 of 7

State	Community	1950 Population	State	Community	1950 Population
California continued	Coachella	2,755	Iowa	Algona	5,415
	Coalinga	5,539		Ames	22,898
	Gilroy	4,951		Atlantic	6,480
	Lodi	13,798		Charles City	10,309
	Madera	10,497		Cherokee	7,705
	Oxnard	21,567		Creston	8,317
	Palmdale	3,500		Denison	4,554
	Taft	3,707		Fairfield	7,299
	Wasco	5,592		Fort Madison	14,954
Colorado	Brighton	4,336		Grinnel	6,828
	Cortez	2,680		LeMars	5,844
	Glenwood Springs	2,412		Muscatine	19,041
	Golden	5,238		Newton	11,723
	Longmont	8,099		Oskaloosa	11,124
	Loveland	6,773		Storm Lake	6,954
	Rocky Ford	4,087		Waverly	5,124
	Walsenburg	5,596		Webster City	7,611
Idaho	Blackfoot	5,180	Kansas	Chanute	10,109
	Kellogg	4,913		Colby	3,859
	Rupert	3,098		Concordia	7,175
	Soda Springs	1,329		Eldorado	11,037
	Weiser	3,961		Fort Scott	10,335

Communities West of Mississippi River
with Daytime AM Radio Facilities Only

Figure 4
Sheet 3 of 7

State	Community	1950 Population
Kansas continued	Goodland	4,690
	Independence	11,335
	Junction City	13,462
	Levenworth	20,579
	Liberal	7,134
	McPherson	8,689
	Marysville	3,866
	Newton	11,590
	Ottawa	10,081
	Parsons	14,750
	Pratt	7,523
	Russell	6,483
Louisiana	Abbeville	9,338
	Amite	2,804
	Covington	5,113
	DeRidder	5,799
	Ferriday	3,847
	Golden Meadow	2,820
	Haynesville	3,040
	Homer	4,749
	Jonesville	1,954
	Lake Providence	4,123
Louisiana continued	Leesville	4,670
	Mansfield	4,440
	Marksville	3,635
	Morgan City	9,759
	Oakdale	5,598
	Rayville	3,138
	Springhill	3,383
	Sulphur	5,996
	Tallulah	7,758
	Thibodaux	7,730
	Ville Platte	6,633
	Vivian	2,426
	White Castle	1,839
	Winnfield	5,629
	Winnsboro	3,655
Minnesota	Albany	1,196
	Anoka	7,396
	Benson	3,398
	Brainerd	12,637
	Hutchinson	4,690
	Little Falls	6,717
	Morris	3,811

Communities West of Mississippi River with Daytime AM Radio Facilities Only

Figure 4
Sheet 4 of 7

State	Community	1950 Population	State	Community	1950 Population
Minnesota continued	New Ulm	9,348	Missouri continued	Malden	3,396
	Northfield	7,487		Marshall	8,850
	Ortonville	2,577		Maryville	6,834
	Owatonna	10,191		Monett	4,771
	Pine City	1,937		Mountain Grove	3,106
	Pipestone	5,269		Neosho	5,790
	Red Wing	10,645		Osage Beach	*
	St. Peter	7,754		St. Charles	14,314
	Stillwater	7,674		Thayer	1,639
	Worthington	7,923		Trenton	6,157
Missouri	Boonville	6,686		Union	2,917
	Branson	1,314		Warrenton	1,584
	Brookfield	5,810		Willow Springs	1,914
	Caruthersville	8,614	Montana	Dillon	3,268
	Charleston	5,501	Nebraska	Broken Bow	3,396
	Chillicothe	8,694		Columbus	8,884
	Clinton	6,075		Holdrege	4,381
	Dexter	4,624		Lexington	5,068
	Farmington	4,490		McCook	7,678
	Festus	5,199		Norfolk	11,335
	Fulton	10,052		Ogallala	3,456
	Kennett	8,685		York	6,178
	Lexington	5,074	Nevada	Fallon	2,400

* Population Unknown

Communities West of Mississippi River with Daytime AM Radio Facilities Only

Figure 4
Sheet 5 of 7

State	Community	1950 Population
New Mexico	Deming	5,672
	Grants	2,251
	Lovington	3,134
	Socorro	4,334
	Tularosa	1,642
Oklahoma	Blackwell	9,199
	Claremore	5,494
	Clinton	7,555
	Cushing	8,414
	Durant	10,541
	Frederick	5,467
	Guymon	4,718
	Henryetta	7,987
	Hobart	5,380
	Pauls Valley	6,896
	Poteau	4,776
	Pryor	4,486
	Stillwater	20,238
	Tahlequah	4,750
	Vinita	5,518
Oregon	Dallas	4,793
	Forest Grove	4,343
Oregon continued	Hermiston	3,804
	Hillsboro	5,142
	Prineville	3,233
South Dakota	Brookings	7,764
	Mobridge	3,753
	Pierre	5,715
	Winner	3,252
Texas	Andrews	3,294
	Athens	5,194
	Atlanta	3,782
	Big Lakes	2,152
	Bonham	7,049
	Breckenridge	6,610
	Brenham	6,941
	Brownfield	6,161
	Cameron	5,052
	Carthage	4,750
	Center	4,323
	Childress	7,619
	Clarksville	4,353
	Cleburne	12,955
	Coleman	6,530

Communities West of Mississippi River with Daytime AM Radio Facilities Only

Figure 4
Sheet 6 of 7

State	Community	1950 Population	State	Community	1950 Population
Texas continued	Colorado City	6,774	Texas continued	Kenedy-Karnes City	6,822
	Conroe	7,298		Kermit	6,912
	Crockett	5,932		Killeen	7,045
	Cuero	7,498		Kingsville	16,898
	Dalhart	5,918		Livingston	2,865
	Diboll	2,391		Marlin	7,099
	Dumas	6,127		McKinney	10,560
	Eagle Pass	7,276		Mexia	6,627
	Eastland	3,626		Mineral Wells	7,801
	El Campo	6,237		Mission	10,765
	Falfurrias	6,712		Mt. Pleasant	6,342
	Floydada	3,210		Muleshoe	2,477
	Fort Stockton	4,444		New Braunfels	12,210
	Freeport	6,012		Pleasanton	2,913
	Gainesville	11,246		Post	3,141
	Gladewater	5,305		Quanah	4,589
	Graham	6,742		Rosenberg	6,210
	Hamilton	3,077		Rusk	6,598
	Henderson	6,833		San Marcos	9,980
	Hereford	5,207		San Saba	3,400
	Hillsboro	8,363		Seguin	9,733
	Jasper	4,403		Seminole	3,479

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Communities West of Mississippi River
with Daytime AM Radio Facilities Only

Figure 4
Sheet 7 of 7

State	Community	1950 Population	State	Community	1950 Population
Texas continued	Shamrock	3,322	Washington	Camas	4,725
	Stephenville	7,155		Chehalis	5,639
	Taylor	9,071		Chelan	2,157
	Terrell	11,544		Colville	3,033
	Tulia	3,222		Edmonds	2,057
	Waxahachie	11,204		Ephrata	4,589
	Weatherford	8,093		Omak	3,791
Utah	Brigham City	6,790		Prosser	2,636
	Centerville	1,262		Quincy	804
	Tooele	7,269		Shelton	5,045
	Vernal	2,845	Wyoming	Douglas	2,544

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Figure 5

ENGINEERING EXHIBIT SUPPORTING COMMENTS BY WESTINGHOUSE BROADCASTING COMPANY IN THE MATTER OF FURTHER PROPOSED RULE MAKING - DOCKET 6741

Tabulation of Stations with Unlimited Operations
Which Have Been Authorized Since 1946 *

Nighttime Power (kilowatts)	Number of Stations
0.25	459
0.5	82
1.0	164
5.0	64
50.0	1
Total	770

* Data were tabulated from the latest edition (1957)of Broadcasting Yearbook

GEORGE C. DAVIS

ENGINEERING STATEMENT RE WHITE AREA WITHIN WBZ PRIMARY NIGHTTIME SERVICE AREA
AUGUST 1958

This engineering statement is prepared on behalf of Westinghouse Broadcasting Company, Inc., licensee of standard broadcast station WBZ, Boston, Massachusetts, concerning a study of the WBZ nighttime service area.

Attached hereto is a map showing the measured interference-free 0.5 mv/m primary nighttime area of WBZ. The areas which receive their only primary nighttime service from WBZ are shown in shaded form on this map. No other standard broadcast station provides interference-free primary nighttime service to this area of 4,579 square miles within which there is a population of 219,773.

The population is based on the U. S. Census of 1950 with detailed attention to the distribution of population throughout minor civil divisions. The area was measured with a polar planimeter.

The measured contour shown on the attached map was obtained from the engineering data in Stipulation No. 1 in Docket No. 6584 and 6585. The other services are identical to those set forth in the exhibits on file in the same dockets with the exception that a new study was made to include those nighttime services which have been added since July 1, 1955, the cutoff date for the preparation of exhibits in Docket 6584 and Docket 6585.

[Engr. Stmt. -Geo. C. Davis (Cont'd)]

The affiant states that he is the same Julius Cohen who prepared the aforementioned engineering exhibits in Dockets 6584 and 6585 on behalf of Westinghouse Broadcasting Company, Inc., and that he is a graduate electrical engineer registered in the District of Columbia, a partner in the firm of George C. Davis, Consulting Engineers, Radio - Television, which firm is consultant for Westinghouse Broadcasting Company, Inc., that the above engineering statement was prepared by him or under his supervision and direction; and that his qualifications are a matter of record before the Federal Communications Commission.

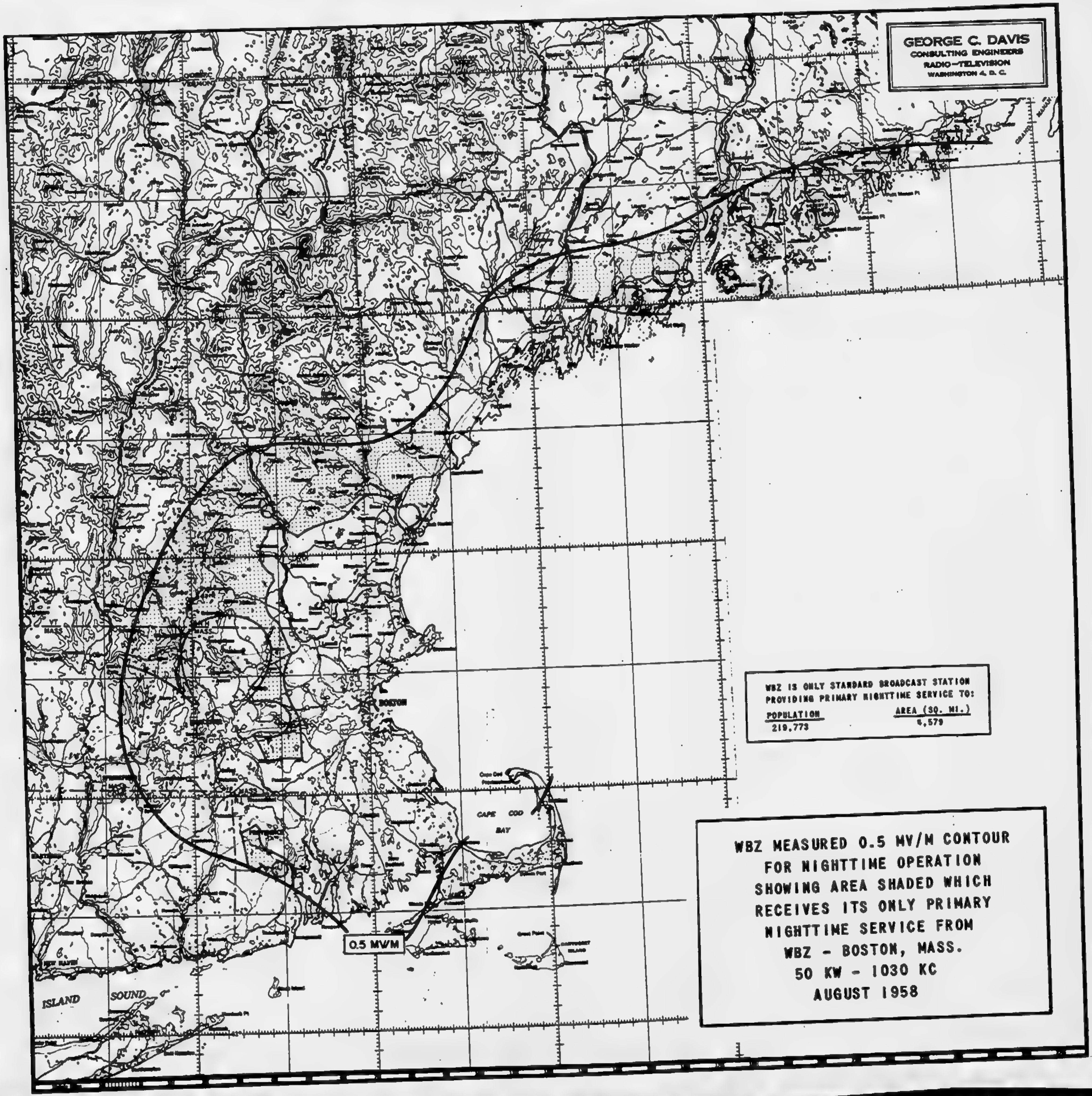
/s/ Julius Cohen
Registration No. 1118

City of Washington)
) ss:
District of Columbia)

Subscribed and sworn to before me this 7th day of August, 1958.

/s/ Joan S. Rhodes
Notary Public
My Commission Expires
February 28, 1962

[Notarial Seal]


BOSTON
CAPE COD BAY
ISLAND SOUND
NEW HAVEN
0.5 MV/M
GRAND MANAN

GEORGE C. DAVIS
CONSULTING ENGINEERS
RADIO—TELEVISION
WASHINGTON 4, D. C.

WBZ IS ONLY STANDARD BROADCAST STATION PROVIDING PRIMARY NIGHTTIME SERVICE TO:

POPULATION	AREA (SQ. MI.)
219,773	4,579

WBZ MEASURED 0.5 MV/M CONTOUR
FOR NIGHTTIME OPERATION
SHOWING AREA SHADED WHICH
RECEIVES ITS ONLY PRIMARY
NIGHTTIME SERVICE FROM
WBZ - BOSTON, MASS.
50 KW - 1030 KC
AUGUST 1958

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COMMENTS OF WRATHER-ALVAREZ BROADCASTING INC.

Comes now Wrather-Alvarez Broadcasting, Inc., licensee* of Standard Broadcast Station KFMB, San Diego, California, by its attorneys, and in response to the Commission's Further Notice of Proposed Rule Making (FCC 57216) issued on April 15, 1958, in the above-captioned proceeding, respectfully submits its Comments, together with supporting data, upon the proposals set forth therein, as follows:

I. Introduction -- Synopsis of Position of Wrather-Alvarez Broadcasting, Inc.

1. Wrather-Alvarez Broadcasting, Inc. (hereinafter sometimes called KFMB), is the licensee* of Standard Broadcast Station KFMB, a

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* Pursuant to Commission authorization (File No. BTC-2801), Wrather-Alvarez Broadcasting, Inc., became a wholly-owned subsidiary of Marietta Investment Corporation on August 5, 1958. An application for consent to the assignment of the licenses of Wrather-Alvarez Broadcasting, Inc., to Marietta Investment Corporation was filed on August 8, 1958, and is pending before the Commission. The engineering statement in support of these comments and attached hereto have been filed in the name of Marietta Investment Corporation as the prospective licensee of Station KFMB.

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Class II station which operates on the 540 kc channel with 5,000 watts of power, unlimited time, using a directional antenna at night only, at San Diego, California. KFMB favors generally the broad purposes of the proposed rulemaking proceeding as affording the opportunity for new and expanded service by appropriate utilization of carefully-selected clear channels. The clear channel proceeding also offers a possible solution to the necessity for a substitution of service in the event that KFMB is forced to abandon the 540 kc channel pursuant to the agreement between the United States and the United Mexican States executed on January 29, 1957, but never ratified by the United States Senate.

2. KFMB presently serves a broad expanse of Southern California over an area of 18,342 square miles daytime, 884 square miles nighttime, including areas where few other primary services are available, on the 540 kc channel (a Canadian Class I-A clear channel), with existing opportunities for still more extensive service. Under the agreement with Mexico, the 540 kc channel would become a Mexican as well as a Canadian Class I-A clear channel, and operation by KFMB on the frequency would be absolutely precluded. KFMB vigorously opposes the ratification of the agreement as contrary to the best interests of the United States and of the public. In the event of ratification, KFMB is prepared to present its position respecting modification of its license at a full evidentiary hearing, pursuant to the provisions of Section 316 of the Communications Act of

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1934, as amended, should its license be sought to be modified to specify operation on another frequency.

3. Although a suggestion (not a requirement of the agreement) has been proffered that KFMB be required to shift operation to 550 kc, the practical utility of that allocation would be so grievously restricted, reducing the area served daytime to 1,921 square miles and nighttime to 516 square miles, that implementation of that proposal would constitute not the substitution of a reasonably adequate facility, but the exaction of a severe penalty upon an innocent licensee and upon a vast audience which relies upon the public-spirited broadcast service which KFMB renders to the region.

4. The "substitution" of the 550 kc for the 540 kc channel would, however, not only be neither just nor equitable if KFMB is to be required to abandon its present authorization, but it would also be

completely unnecessary. The proposed rule making in the clear channel proceeding, properly modified, permits a solution which would provide a broadcast service to Southern California reasonably compensatory in nature to the present service of the station to its audience; which would further the purpose of this proceeding to bring radio broadcasting to unserved and under-served areas; and which would prevent a wasteful use of limited spectrum space. The engineering study of Hammett & Edison, consulting radio engineers, attached hereto, proposes the following two modifications of the Commission's proposals to provide additional broadcast service and to resolve the KFMB Mexican treaty problem with even-handed fairness:

(1) Assign unlimited time Class II stations on 760 kc in the West. Retain Station WJR, Detroit, at its present maximum 50 kw power with protection afforded to its present secondary skywave service area.

(2) Assign a Class I-B station on 1210 kc in the West. Require directional operation by both this station and Station WCAU, Philadelphia, for mutual protection.

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Having endeavored for a considerable period to reach a solution to the 540 kc impasse which would be just and reasonable, KFMB submits its proposals herein in a spirit of flexibility and compromise.

II. The Proposed Displacement of KFMB from 540 kc

5. International authority for the use of the 540 kc channel in the standard broadcast band is derived from the International Telecommunications Convention, Atlantic City (1947) and the annexed Radio Regulations, which provided in a footnote to Article 47 that the allocation of 540 kc to the broadcast band was to become effective January 1, 1949, in accordance with special arrangements to be agreed upon by interested countries. Notwithstanding this provision, and

despite the vigorous protests of the United States Government, the Government of Mexico permitted the establishment of Station XEWA at San Luis, Potosi, S.L.P. operating on

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540 kc with a power of 150,000 watts, unlimited time, utilizing a directional antenna system at night as a Class I-A station.

6. Under the terms of the North American Regional Broadcasting Agreement (NARBA) of 1950, which has never been ratified by the United States Senate, the United States recognized the priority of Canada to 540 kc as a Class I-A Canadian clear channel, and Radio Station CBK at Watrous, Saskatchewan, was authorized by Canada to operate on the 540 kc frequency with a power of 50,000 watts and a non-directional antenna, unlimited time. Sulking over the pattern of agreement which was emerging at the third NARBA conference meeting held in Washington, D.C., between September 6 and November 15, 1950, motivated in large part by its refusal to recognize the doctrine of prior usage in supporting the continued use of radio frequencies, and its insistence upon non-reciprocal coverage protection for the signals of Mexican stations within the United States, the Mexican delegation formally withdrew from the conference on October 18, 1950.

7. With the 540 kc channel assignment in this posture, the Commission invited applications to make effective utilization of the channel, and KFMB successfully made application (File No. BP-8716) for a construction permit to change its frequency from 550 kc, where it was then licensed to operate, to 540 kc, and to increase power from 1,000 watts to 5,000 watts. By letter to KFMB dated December 23, 1953, the Commission recognized that the authorization for the operation of the Mexican Station

XEWA was premature, and implicitly pledged its efforts to protect the validity of the KFMB assignment, as follows:

> "This has reference to your application (File No. BP-8716) for a construction permit to change the frequency of station KFMB to 540 kilocycles and to increase power to five kilowatts which was granted by the Commission December 17, 1953.
>
> "In connection with the above-mentioned grant it is necessary, however, to call to your attention the fact that the Mexican Government in accordance with international procedures has notifed a station, XEWA, San Luis, Potosi, S. L. P. operating on 540 kilocycles with a power of 150 kilowatts, unlimited time, utilizing a directional antenna system at night as a Class I-A station. In May, 1948, the United States Government objected to the premature assignment of the station and has not recognized its classification as a I-A station. [Underlining supplied]
>
> "Under existing agreements, the grant of your application will now be notified to the Office of Inter-American Radio for transmission to other countries of the North American region. It is probable that the Mexican Government will protest the KFMB assignment. The Commission, however, is cognizant of this possibility and believes that the validity of the KFMB assignment can be upheld." [Underlining supplied]

8. Thereafter, however, in order to obtain concessions which they believed desirable, representatives of the United States entered into an informal agreement in July, 1955, and executed a formal agreement on January 29, 1957, at Mexico City, with the United Mexican States, which if ratified by the United States Senate would abandon the present operation of KFMB on 540 kc. Annex I, Paragraph B 1 a (3), provides as follows:

"(3) 540 kc/s-Assignments in the United States of America on this frequency:

"(a) shall be located outside the area; bounded on the north by the parallel 35°N and on the east by the meridian 93°W; provided that no such assignments may be made within the United States of America south of the parallel 30°N, and

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"(b) shall not place a signal intensity at any point within the United Mexican States in excess of 50 uV/m nighttime and 10 uV/m daytime."

9. KFMB has vigorously opposed the ratification of the agreement with Mexico, as contrary to the best interests of the United States and of the public, pointing out a number of areas in which KFMB believes that the agreement is discriminatory, non-reciprocal, and unreasonable, in favor of the United Mexican States. With respect to the 540 kc channel, KFMB has pointed out, inter alia, that the proposed use by Mexico of the 540 kc channel is inconsistent with the NARBA of 1950, likewise unratified by the United States Senate, which recognized Canadian Class I-A priority on the frequency; that a serious loss in service will be occasioned to the present KFMB audience; and that KFMB must suffer an economic burden if it is required to make any change of facilities. KFMB has not receded in its opposition.

10. KFMB recognizes, of course, that this is not the proper forum in which to argue international broadcast policy and the public interest implications in the provisions of the agreement with the United Mexican States, which has been pending before the United States Senate Foreign Relations Committee for more than one and one-half years. It is perhaps not inappropriate to note, however, that a primary consideration in Senate Committee deliberations upon the treaty has been whether the terms of the agreement are basically fair in operation to a large body

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of American broadcasters. Accordingly, the clear channel proceeding is a proper forum for bringing the problems of the Mexican treaty before the Commission insofar as it appears to offer a solution presaging a reasonable adjustment of difference among all interested parties.

III. Public Interest Consideration in KFMB's Proposals in This Proceeding

11. Fortified by the Commission's assurance in its letter of December 23, 1953, that the Commission believed that the validity of the KFMB assignment could be upheld, strengthened by the refusal of the United States to recognize the "Sooner" claim of Station XEWA, and deeply responsive to its own obligations as a broadcast licensee, KFMB shifted operation to the 540 kc channel and improved its facilities to bring a new era in broadcast service to the entire booming region of Southern California south of the Tehachapi Mountains. The magnificent record of KFMB in discharging its public service responsibilities to its expanded audience, its distinguished position in its community, in the broad area that it serves, and in the broadcast industry, and its special continuing contributions to the national defense, is too well known to the Commission to be here labored. The identification of KFMB with responsible broadcasting in Southern California is both complete and, but for the brooding omnipresence of the Mexican agreement, secure.

12. On June 27, 1956, following a hearing (Docket No. 11552, the Commission authorized a further expansion of KFMB's service area by

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granting the application of KFBM for modification of its license from directional antenna day and night to directional antenna at night only. During daytime hours, with a non-directional antenna, service is rendered on the 540 kc channel to a total of 1,773,739 persons**

(1950 Census), including residents of areas where few other primary services are available. Reliable estimates show that Southern California has increased in population approximately 50% since 1950, so that KFMB is now servicing approximately 2,500,000 people exclusive of the Los Angeles area. No interference is received or caused to other stations except for very minor adjacent-channel interference with Station KAFY along the coast of California near Santa Barbara. The KFMB service area blankets the entire area of Southern California south of the Tehachapi Mountains, including the Imperial Valley-Salton Sea area, KFMB ranking in wide-area coverage with such stations as KFI, KNX, and KBIG.

13. During nighttime hours, KFMB operated with a directional antenna to protect the Canadian border, in accordance with the NARBA of 1950. The interference received from co-channel stations is quite low, resulting in an RSS limitation of 3.65 mv/m. During nighttime hours, 488,602 persons (1950 Census) reside within the interference-free contour.

** This does not include the population of the Los Angeles area (1950 Census population of the city 1,970,358, of the urbanized area 3,996,946), although KFMB's operation places a signal of 2.0mv/m or greater over all, or a very substantial portion of, the city and the urbanized area contiguous thereto. See Wrather-Alvarez Broadcasting, Inc. 13 RR 1284, 1287 fn. 5 (1956).

[1065]

14. Being a Canadian clear channel, the 540 kc channel provides no fundamental limitation on KFMB operating with up to 50,000 watts power, making possible still further improvement in service to meet the needs of the rapidly growing areas of San Diego and the Imperial Valley. During the past several years, KFMB has been engaged in making engineering studies and in a concentrated search for land for the construction of a transmitter plant which could provide greatly increased power and still better service by the station to an increasing audience.

15. This would all be changed by the Mexican agreement. Annex V of the Agreement between the United States and the United Mexican States provides for specific allocations, making reference to operation of a station at San Diego on 550 kc with 5,000 watts power, unlimited time, using a directional antenna. Note k thereto states: "Protection requirements for other stations to be based on previous operation on 550 kc." By no means, however, would the agreement, if ratified, by these terms *require* that KFMB change its frequency to 550 kc, but rather is only *permissive* in nature, authorizing operation by a United States station within the limitations set forth. Although it may be readily conceded that nations may validly agree upon allocations in the use of the standard broadcast band, certainly it would be a curious, and indeed a startling, proposition, raising important questions of constitutional law, were it to be asserted that a foreign sovereignty by agreement may dictate the manner

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in which this Government shall adjust its relations with its citizens within those segments of the broadcast band which are completely a matter of domestic jurisdiction and concern.

16. Section 316 of the Communications Act of 1934, as amended, while authorizing the modification of a station license if the provisions of any treaty ratified by the United States would thereby be more fully complied with, requires that reasonable opportunity shall be given to the licensee, upon request, to show cause by public hearing why such order of modification should not issue, with both the burden of proceeding with the introduction of evidence and the burden of proof being placed by statute upon the Commission. The hearing requirements of Section 316(a), by their terms, apply to modifications resulting from a treaty. *American Broadcasting Co.* v. *Federal Communications Commission (KOB case)*, 1951, 89 U.S. App. D.C. 298, 191 F.2d 492, 499; cf. *Federal Communications Commission* v. *National Broadcasting Co. (KOA case)*, 1943, 319 U.S. 239, 245-246. It is impossible to

believe that the United States, in consummating an agreement granting certain rights to the United Mexican States, meant to barter away the right of KFMB to present its side of the case and give evidence. If KFMB may not show what substitute assignment would best serve the public interest because the result is a foregone conclusion, then it has been effectively deprived of statutory hearing rights.

17. If the interests of the individual licensee is eventually to be sacrificed for what is believed to be the general good in securing the

ratification of a broadcast agreement with the Government of Mexico, then it is submitted that it is incumbent upon the Commission in the interests of fair play to seek to reduce that sacrifice to a minimal degree, and to provide an assignment which would tend to make the licensee whole again. While the grant of a license does not confer upon the licensee a vested right in the frequency, at the same time a broadcast authorization does bestow not only certain legal rights of due process upon the licensee but also certain practical benefits upon both the licensee and its prospective audience which should not be eroded or destroyed unless absolutely required by the circumstances. Here, if the 540 kc channel is to be severed from KFMB, then essential fairness in the treatment of citizens by their Government and the promotion of the public interest will happily coincide only by the substitution of a channel which will allow KFMB to continue to provide a comparable broadcast service to the people of Southern California, many of whom will not otherwise receive adequate service.

18. It is clear that a forced change from present operation to 550 kc would be grossly inadequate. As noted in the attached engineering statement, to operate within required limits on 550 kc, even with 5,000 watts power, it would be necessary that KFMB suppress radiation to the north and to the east to low values substantially equivalent to operation with 1,000 watts. While greater radiation could be directed

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to the south and west with 5,000 watts power, the Mexican border is only 18 miles to the south and the Pacific Ocean only ten miles to the west. From the viewpoint of practical coverage, therefore, the 550 kc channel would be limited to serving only San Diego and the immediate vicinity, with the present wide-area coverage by KFMB of the Imperial Valley being reduced to negligible proportions because of the radiation limits imposed and the interference from other stations.

19. Similarly, there are no other frequencies available outside of the clear channel reservations to provide adequate substitute service. The growth of radio broadcasting in Southern California during the last decade has been so rapid that very few broadcast channels remain available to the new applicant. Local channels provide only unduly restricted service, and the regional channels offer no possibility of daytime coverage equivalent to KFMB's present operation.

20. In throwing the clear channels open to rulemaking proposals, the Commission has provided a possible solution, in which the criterion of the public interest can serve as the supple instrument for proper adjustment for the increasing complexities of radio broadcasting. Cf. Federal Communications Commission v. Pottsville Broadcasting Co., 1940, 309 U.S. 134, 137-138. Properly modified, as the Notice of Proposed Rule Making permits, a reasonably adequate substitute can be evolved which will further generally the purposes of the proceeding and also permit an equitable, flexible compromise in the individual case if KFMB

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is required to surrender its present assignment because of a situation created by the Mexican agreement which was in no wise of its own making.

21. The attached engineering statement prepared by Hammett & Edison, consulting radio engineers, while representing extensive research, is so clear, brief, and pointed as neither to require nor permit summarization here. Having reviewed various alternative proposals to provide additional service to the public and to permit a fair resolution of the issues if KFMB is forced to abandon the 540 kc channel, they conclude that the most desirable solution is offered by the following two modifications of the Commission's proposals:

(1) Assign unlimited time Class II stations on 760 kc in the West. Retain Station WJR, Detroit, at its present maximum 50 kw power with protection afforded to its present secondary skywave service area.

(2) Assign a Class I-B station on 1210 kc in the West. Require directional operation by both this station and Station WCAU, Philadelphia, for mutual protection.

22. The proposals have been carefully evolved. They are designed to promote not only private interest but the public good. They merit, it is submitted, the careful attention and consideration of the Commission.

WRATHER-ALVAREZ BROADCASTING, INC.
By: /s/ Vincent B. Welch
/s/ Herbert E. Forrest
WELCH, MOTT & MORGAN
Its Attorneys

* * *

[1070]

MARIETTA INVESTMENT CORPORATION

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

COMMENTS ON CLEAR CHANNEL RULEMAKING PROPOSAL DOCKET NO. 6741

[1071]

ENGINEERING STATEMENT OF ROBERT L. HAMMETT, CONSULTING RADIO ENGINEER

The firm of Hammett & Edison, Consulting Radio Engineers, has been retained by Marietta Investment Corporation, licensee of Standard Broadcast Station KFMB, San Diego, California, to make engineering studies of the Further Notice of Proposed Rulemaking of the Federal Communications Commission, dated April 25, 1958, in Docket No. 6741. This firm has also been retained to prepare supporting data for comments being filed by Marietta Investment Corporation to the rulemaking proposal of the Federal Communications Commission.

EXISTING OPERATION OF KFMB

The primary interest of Marietta Investment Corporation in the re-allocation of Clear channels stems from a possible future requirement to change the operating frequency of Station KFMB in San Diego. KFMB now operates as a Class II station on the 540 kc channel with 5,000 watts of power, non-directional daytime, directional nighttime. The 540 kc channel was designated by the 1950 North American Regional Broadcasting Agreement as a Canadian Class I-A Clear Channel. KFMB is licensed to operate on this channel while providing nighttime protection to the Canadian border, pursuant to the Agreement. Operating on the 540 kc channel, KFMB provides extensive daytime and nighttime service to the southwestern corner of the United States.

As a result of negotiations between the United States and Mexico, subsequent to the NARBA agreement, a bilateral agreement was reached with Mexico on January 29, 1957, under which the use of the 540 kc channel by Mexico for a Class I-A station was recognized. This agreement would require that KFMB discontinue its present licensed operation on the 540 kc channel. Although the Mexican agreement has not been ratified by the United States Senate, consideration has been given by the licensee to all possible alternate allocations for Station KFMB which would preserve the extensive service now being rendered. Figure 1 attached shows the existing service by KFMB, much of which occurs in areas having few other primary services available.

COMMENTS ON FCC RULEMAKING PROPOSAL

Marietta Investment Corporation favors the broad purposes of the proposed Rulemaking. The additional service which can be made available by duplication on carefully-selected Clear channels is believed to be in the public interest. Although most of the channels on which duplication is proposed by the Commission are unusable in the San Diego area for various reasons, a few of the Clear channels do offer possibilities for solution of the problems which would arise if KFMB should be forced to abandon the 540 kc channel.

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To provide additional service to the public and to alleviate the KFMB problem, the following two modifications of the Commission's proposal are desirable:

1. Assign unlimited time Class II stations on 760 kc in the West. Retain Station WJR, Detroit, at its present maximum 50 kw power with protection afforded to its present secondary skywave service area.
2. Assign a Class I-B station on 1210 kc in the West. Require directional operation by both this station and Station WCAU, Philadelphia, for mutual protection.

Consideration has been given to each of the suggested modifications of the FCC proposal. These studies are summarized below:

1. Assign unlimited time Class II stations in the West on 760 kc. An inspection of the proposed Rulemaking shows that Detroit is the most easterly of the cities on which the Commission contemplates possible high-powered operation. As a consequence of its northeastern location, the additional service which might be rendered by Station WJR in Detroit, operating with 750 kw, would fall in regions already having adequate service. This is true not only toward the east but also toward the west. For example, if it be assumed that the secondary service of the Detroit station with 750 kw would extend approximately 1100 miles to the west, it can be seen that within this area there are located four Chicago Clear channel stations, plus Clear channel stations in Minneapolis, Des Moines, Dallas, and St. Louis. Also serving the same general western area, although farther than 1100 miles from Detroit proper, is a station in Salt Lake City. The Minneapolis, Des Moines, Salt Lake City, and Dallas stations are all among those on which high-powered operation is contemplated by the Commission. Furthermore, the Commission's proposal would add new Clear channel stations in Montana, Wyoming, Arizona, and Idaho, all of which could provide service to portions of the area WJR would not serve if it were maintained at its present 50 kw. Retaining the present coverage of WJR, in lieu of a possible future increase, would not, therefore, significantly restrict the available secondary service. It is believed that the use of high power on the 760 kc channel would constitute a wasteful use of limited spectrum space, in that the service gains would be achieved principally in areas which are already well served at the cost of additional stations in the West and the foreclosing of the most reasonable solution of the allocation problem which would exist if KFMB should be forced to abandon the 540 kc channel. Figure 2B illustrates how the existing secondary skywave coverage of WJR would be protected by KFMB operating as a Class II station.

In the event that the Commission feels there is need for coverage in the Middle West from a high-powered eastern station, it would be possible to reserve action on the 1020 kc channel for possible operation of Station KDKA in Pittsburgh on high power.

2. Assign a Class I-B station on 1210 kc in the West. The use of this channel to provide a new secondary skywave service in the West would clearly be in the public interest. The channel could be assigned to Montana in the event KFMB should be assigned 660 kc. Alternatively the 1210 kc channel could be used by KFMB or in some other western

area needing additional service. With regard to the effect of the necessary directionalization of Station WCAU, Figure 5B attached has been prepared to show the gains in service obtained by duplication on 1210 kc. Suitable directional antennas have been designed for Stations WCAU and KFMB. This map was prepared in accordance with the present Rules. Studies which have been made by the procedure outlined in Exhibit 109 of the Clear channel proceeding also show that the gains in the West clearly outweigh the losses in the East. The high atmospheric noise levels in the East restrict the secondary coverage obtainable.

It can be seen that the secondary service now existing from Station WCAU falls almost entirely in areas which are well served. Considering only Clear channel stations, it has been determined that the following stations provide secondary service to all or portions of the area which would lose nighttime secondary service if WCAU were to directionalize to permit an additional Class 1 station in the West:

650 kc	Nashville
670	Chicago
700	Cincinnati
720	Chicago
750	Atlanta
760	Detroit
780	Chicago
820	Dallas
830	Minneapolis
840 kc	Louisville
870	New Orleans
890	Chicago
1020	Pittsburgh
1040	Des Moines
1100	Cleveland
1120	St. Louis
1180	Rochester

An examination of the allocation proposed by the FCC shows that 1210 kc is the only Clear channel with an East Coast station which is not proposed for a 1-B station in the West. As set forth in Paragraph 56 of the proposed Rulemaking, stations located close to the northern and eastern boundaries offer the maximum opportunity for the assignment of additional unlimited co-channel stations in the western part of the country.

POSSIBLE FUTURE OPERATION OF KFMB

If KFMB should be required to abandon 540 kc, it would propose to operate as a Class II station on 760 kc, 50 kw, DA-N. Such an assignment would be the most satisfactory substitute for the present operation. Maps showing the coverage are attached as Figures 2A and 2B.

In addition to 760 kc, but less desirable, are the following channels which could provide a reasonably satisfactory substitute for the service now being rendered by KFMB on 540 kc:

1. Class II, 670 kc, 50 kw, DA-N.
2. Class I-B, 660 kc, 50 kw, DA-N, with 1210 kc, 50 kw, DA-N, assigned to Montana.
3. Class I-B, 1210 kc, 50 kw, DA-N, with Station KSON, San Diego, reassigned to either 1250 kc or 550 kc.
4. Class II, 890 kc, 50 kw, DA-N, with Station KBAB, El Cajon, re-assigned to 550 kc.

It is recognized that some of the above suggested solutions to the San Diego problem would require a waiver of the requirements of Section 3.37 of the FCC Rules or the re-allocation of other stations. On some frequencies, both re-allocation and waivers would be required. In the special circumstances existing here, such waivers appear to be in the public interest and would be acceptable to the licensee. However, from a technical standpoint, the present operation of KFMB on 540 kc is preferable to any alternative.

In order to preserve the present daytime service being rendered to the relatively unserved area east of San Diego, it would be necessary that the daytime operation on any of the above channels be non-directional. Where this is at variance with the provisions of Section 1.351 of the FCC Rules, it is believed that a waiver would not be unappropriate for the Class II operations here suggested because of the great distances separating San Diego and the dominant stations on each of the several channels.

Studies which I have made show that no difficulty would be experienced in the construction and operation of a directional antenna to provide the desired protection to the secondary skywave service of the Class I stations now operating on each of the above listed channels.

COMPARISON OF ALTERNATIVES

To illustrate the service which can be rendered by each of the several channels considered for Station KFMB, the attached maps have been prepared. The comparative coverages are as follows:

Figure	Operation	Area Served Daytime	Area Served Nighttime	Area Served Nighttime Secondary
1	Existing 540 kc, 5 kw, DA-N	18,342 sq mi	884 sq mi	- - -
2	Class II 760 kc, 50 kw, DA-N	31,923	10,968	- - -
3	Class II 670 kc, 50 kw, DA-N	35,370	9,992	- - -
4	Class IB 660 kc, 50 kw, DA-N	35,278	29,758	426,000 sq mi
5	Class IB 1210 kc, 50 kw, DA-N	13,735	14,558	426,000
6	Class II 890 kc, 50 kw, DA-N	21,766	6,701	- - -
7	Class III 550 kc, 1 kw, DA-N	1,921	516	- - -

INADEQUACY OF 550 KC CHANNEL

The 1957 Agreement between the United States and Mexico contemplates the operation of Station KFMB on the 550 kc channel with 5 kilowatts of power and a directional antenna. The agreement states: "Protection requirements for other stations to be based on previous operation on 550 kc/s." The previous operation was 1 kw, DA-1. To operate within these limits, KFMB would be required to suppress radiation to the north and to the east to the low values formerly existing with the 1 kw operation. Only in the directions south and west could greater radiation be directed with 5 kw of power. To the south a distance of only 18 miles is the Mexican border and to the west a distance of only 10 miles is the Pacific Ocean. Therefore, even though the Mexican Agreement specifies 5 kw operation on

[1075]

550 kc for KFMB, the actual service which can be rendered would not be significantly greater than that given with 1 kw on 550 kc prior to the change to 5 kw on 540 kc four years ago.

A map, Figure 7, has been prepared to show the service which can be given on the 550 kc channel. From these maps and the above tabulation of area served, it is apparent that the 550 kc channel is not an adequate or even a reasonable substitute for the 540 kc channel.

CONCLUSIONS

As a result of the studies made, it is concluded that it would be in the public interest to adopt the subject rulemaking proposal of the Federal Communications Commission with the modifications listed above. It is concluded that, with these modifications, the adoption of the proposed rules would make possible a solution of the problem which would arise if KFMB should be forced to vacate the 540 kc channel.

HAMMETT & EDISON
Consulting Radio Engineers
/s/ Robert L. Hammett

August 12, 1958

[1076]

AFFIDAVIT

State of California)
) ss:
County of San Mateo)

Robert L. Hammett, being first duly sworn upon oath, deposes and says:

1. That he is a qualified engineer and a partner in the firm of Hammett & Edison, Consulting Radio Engineers, with offices located near the city of San Francisco, California,

2. That he graduated from Stanford University in 1942, received a Master of Arts Degree in Electrical Engineering from Stanford University in 1943, was a Research Associate at Radio Research Laboratory, Harvard University from 1943 through 1945, was a partner in the firm of A. Earl Cullum, Jr., Consulting Radio Engineers, Dallas, Texas, from 1946 through 1951, and has carried out a consulting practice in San Francisco since 1952,

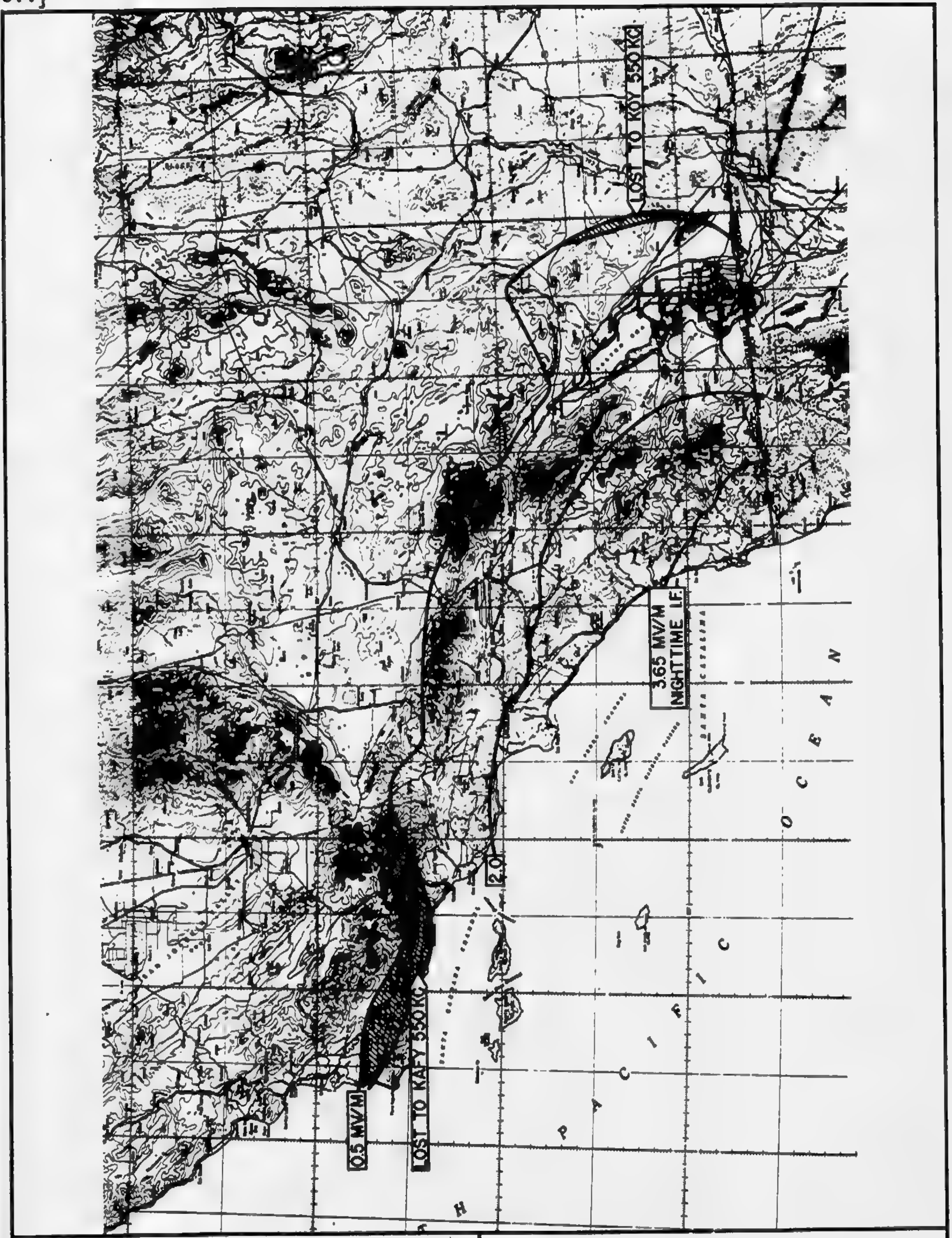
3. That the firm of Hammett & Edison, Consulting Radio Engineers, has been retained by Marietta Investment Corporation, licensee of Standard Broadcast Station KFMB, San Diego, California, to make engineering studies of the Further Notice of Proposed Rule-making of the Federal Communications Commission, dated April 25, 1958, in Docket No. 6741,

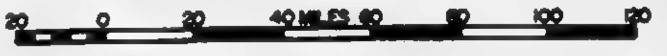
4. That he has carried out such engineering work and that the results thereof are attached hereto and form a part of this affidavit, and

5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements therein made on information and belief, and as to such statements, he believes them to be true.

/s/ Robert L. Hammett

[JURAT - Dated August 12, 1958]


LOST TO KOY 550 KC
3.65 MV/M NIGHTTIME LF.
2.0
0.5 MV/M
LOST TO KAFY 550 KC
PACIFIC OCEAN


20 0 20 40 MILES 60 80 100 120

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5KW, DA-N
SAN DIEGO, CALIFORNIA

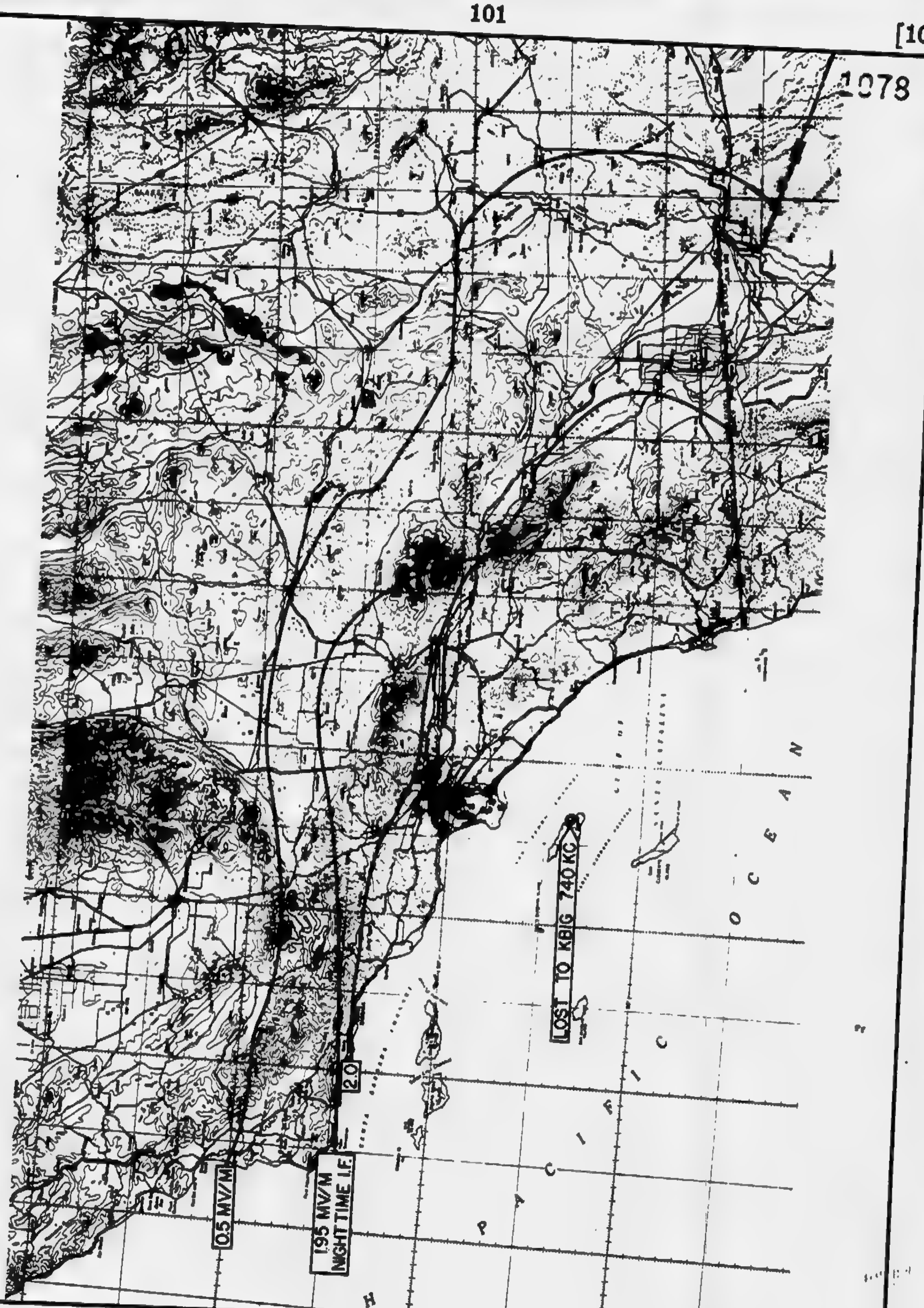
EXISTING 540 KC COVERAGE

5KW, DA-N

580811

FIGURE 1

1078


0.5 MV/M
1.95 MV/M NIGHTTIME I.F.
2.0
LOST TO KBIG 740 KC
PACIFIC OCEAN
H

20
0
20
40 MILES 60
80
100
120

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

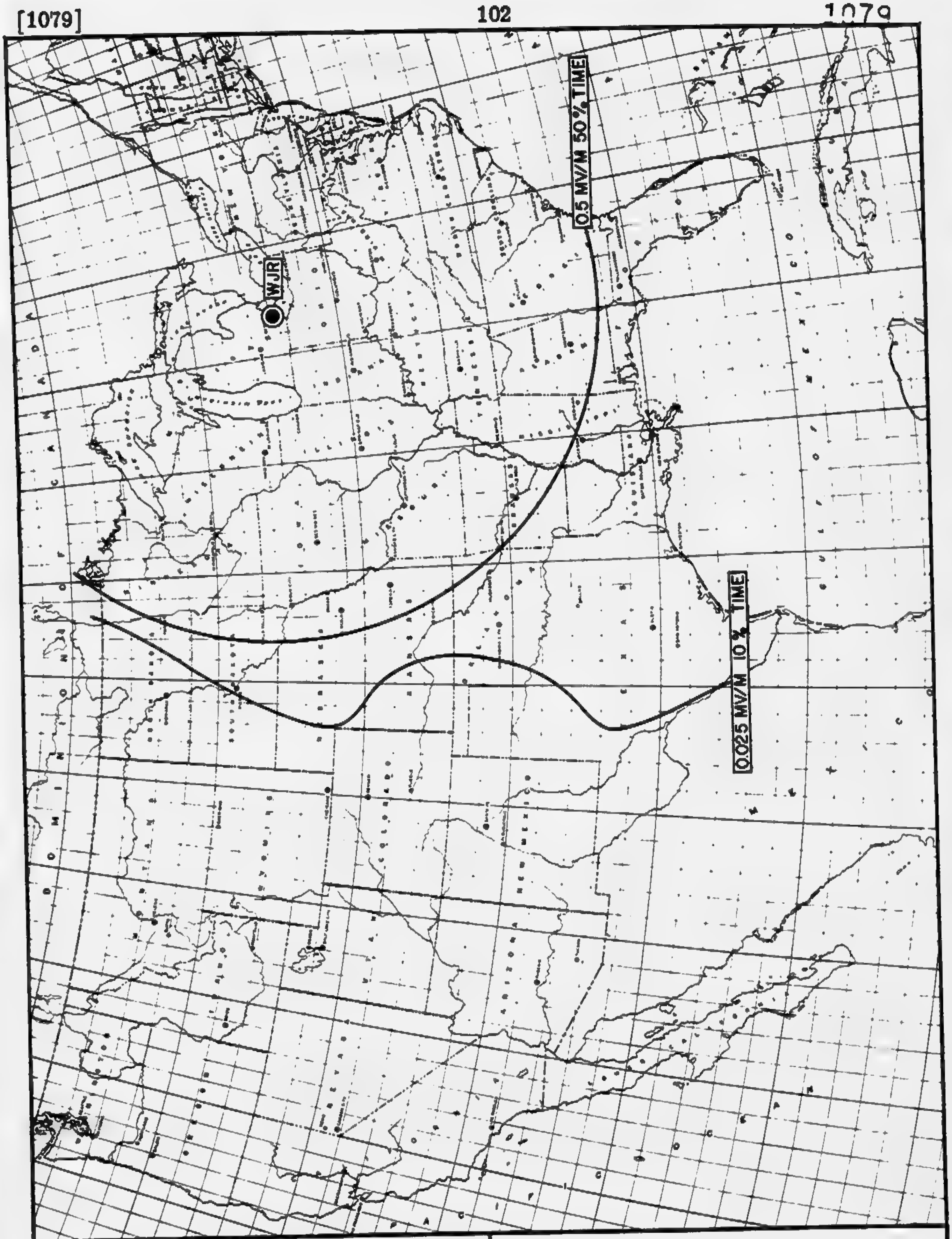
RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

760 KC COVERAGE

50 KW, DA-N

580811

FIGURE 2 A


0.5 MV/M 50% TIME
WJR
0.025 MV/M 10% TIME

100 0 100 200 MILES 500 600 700 800

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

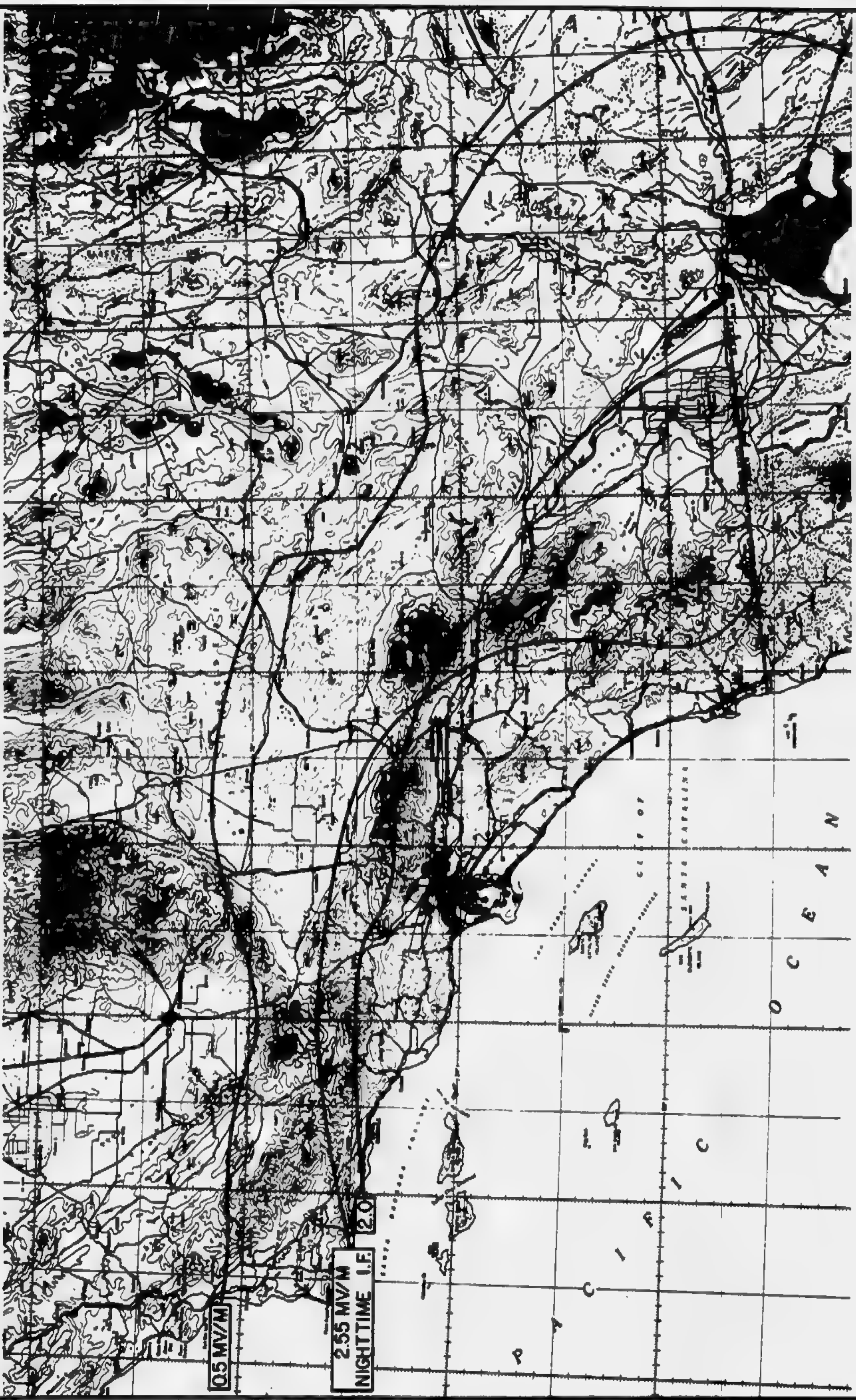
RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

760 KC
NIGHTTIME ALLOCATION MAP
50 KW, DA-N

580811

FIGURE 2B

1080


0.5 MV/M
2.55 MV/M NIGHTTIME I.F.
2.0
PACIFIC OCEAN

20 0 20 40 MILES 60 80 100 120

670 KC COVERAGE

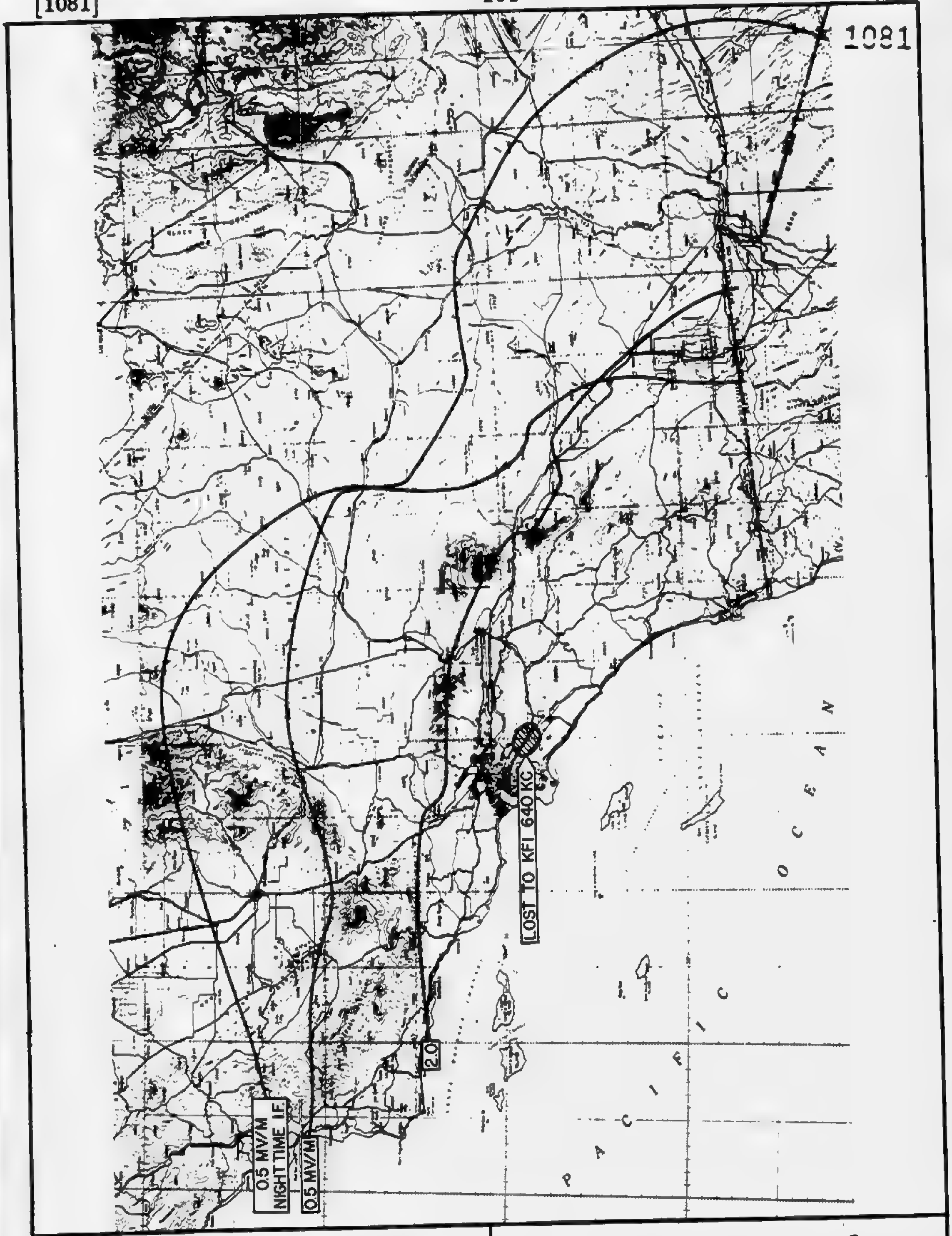
50 KW, DA-N

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

580811

FIGURE 3


LOST TO KFI 640 KC
0.5 MV/M NIGHT TIME I.F.
0.5 MV/M
2.0
PACIFIC OCEAN

20 0 20 40 MILES 60 80 100 120

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

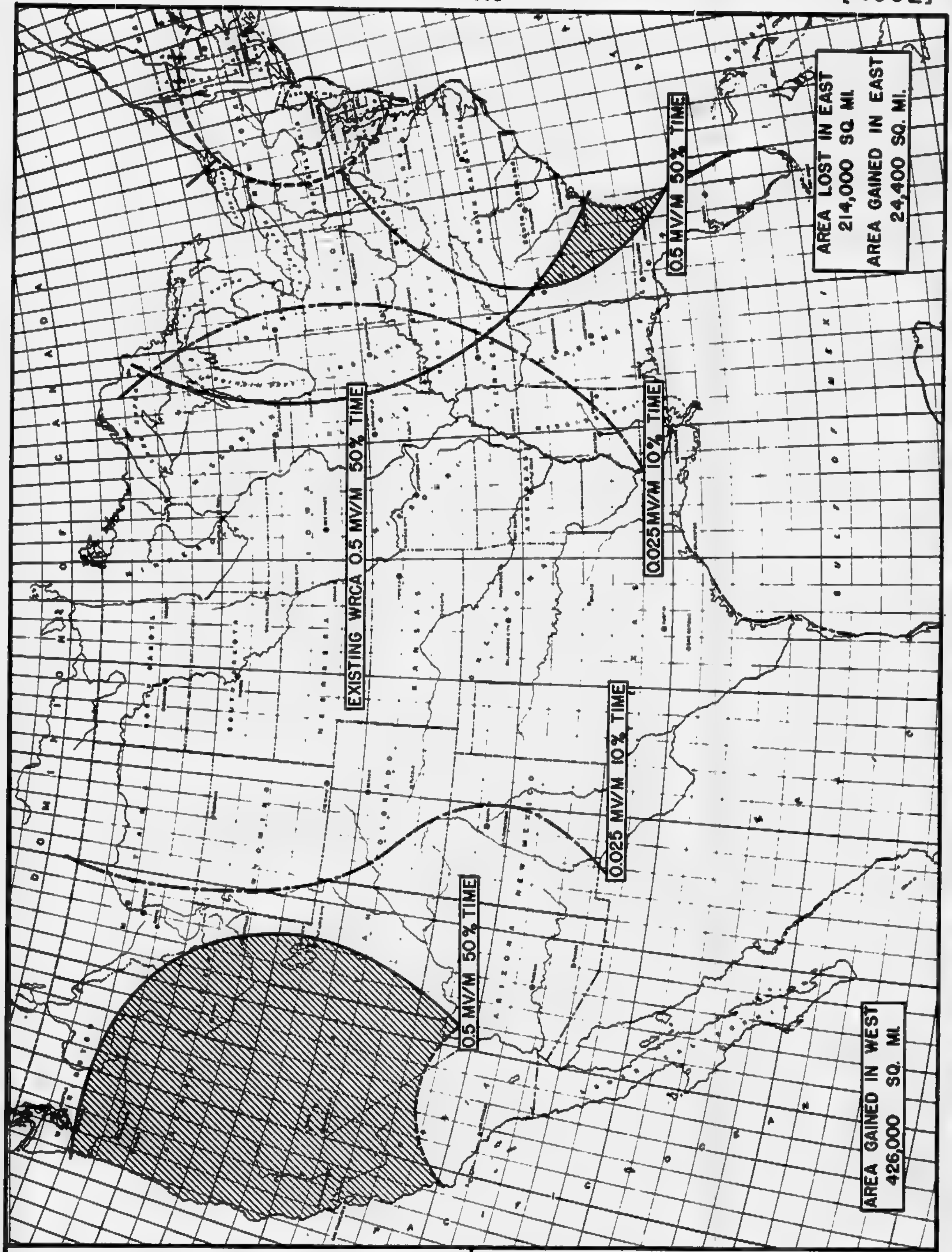
RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

660 KC COVERAGE

50 KW, DA-N

580811

FIGURE 4A


AREA LOST IN EAST
214,000 SQ. MI.
AREA GAINED IN EAST
24,400 SQ. MI.
0.5 MV/M 50% TIME
0.025MV/M 10% TIME
EXISTING WRCA 0.5 MV/M 50% TIME
0.025 MV/M 10% TIME
0.5 MV/M 50% TIME
AREA GAINED IN WEST
426,000 SQ. MI.
DOMINION OF CANADA
PACIFIC

100 0 100 200 MILES 500 600 700 800

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

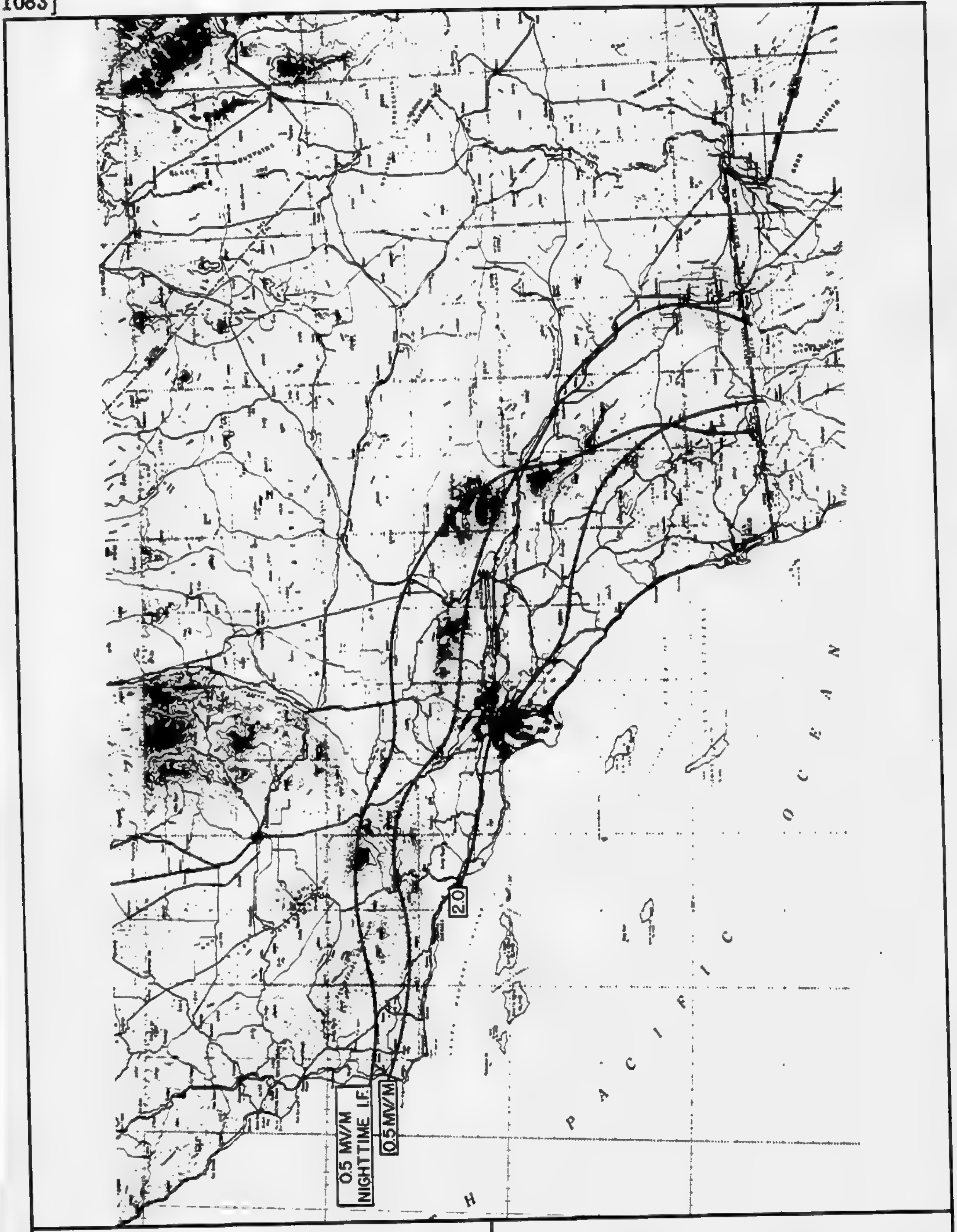
RADIO STATION KFMB
540 KC, 5KW, DA-N
SAN DIEGO, CALIFORNIA

660 KC
SECONDARY NIGHTTIME COVERAGE

50 KW, DA-N
CLASS I STATIONS IN NEW YORK & SAN DIEGO

580811

FIGURE 45


0.5 MV/M
NIGHTTIME I.F.
0.5 MV/M
2.0
PACIFIC OCEAN
20 0 20 40 MILES 60 80 100 120

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

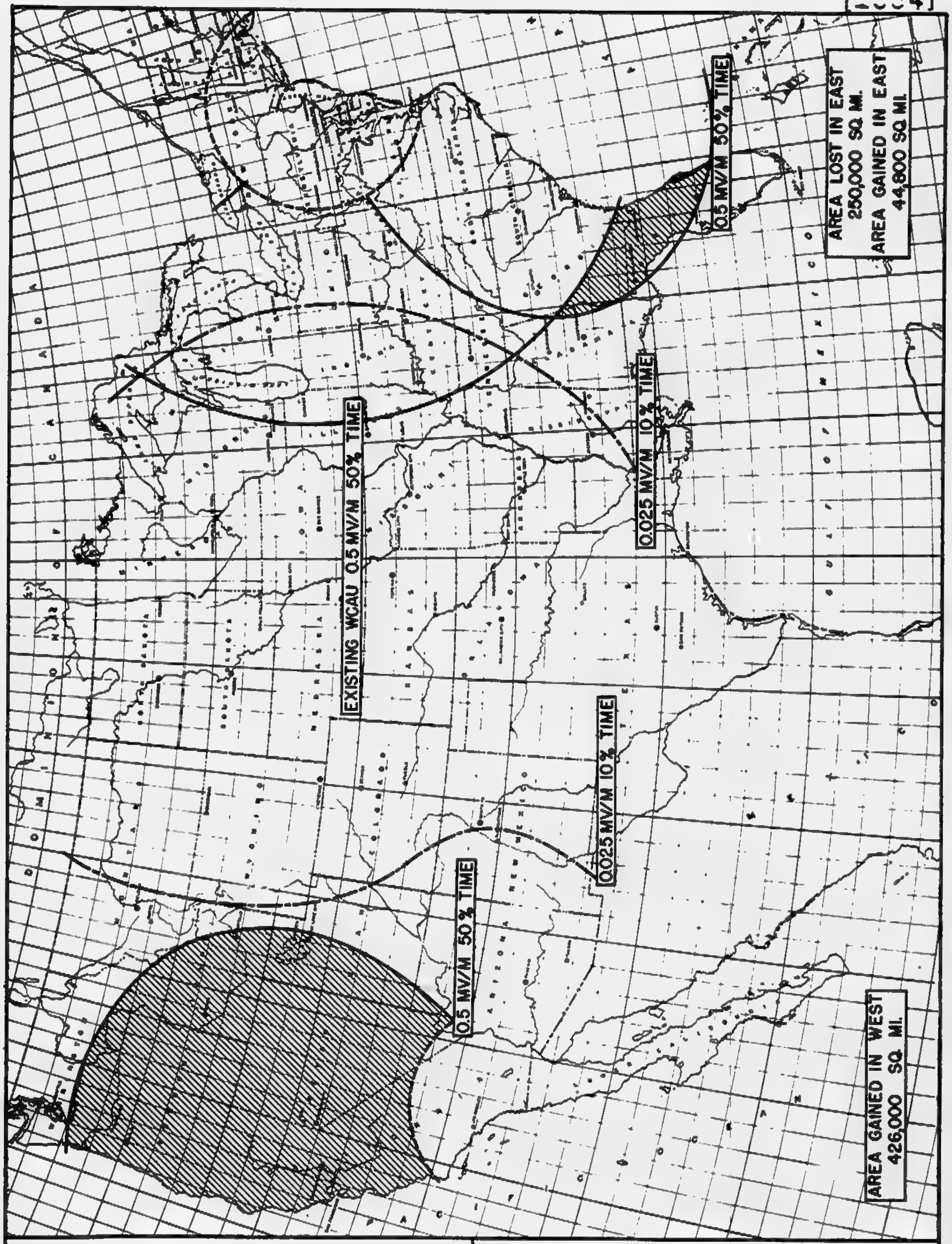
RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

1210 KC COVERAGE

50 KW, DA-N

580811

FIGURE 5A


AREA LOST IN EAST
250,000 SQ. MI.
AREA GAINED IN EAST
44,800 SQ. MI.
0.5 MV/M 50% TIME
0.025 MV/M 10% TIME
EXISTING WCAU 0.5 MV/M 50% TIME
0.025 MV/M 10% TIME
0.5 MV/M 50% TIME
AREA GAINED IN WEST
426,000 SQ. MI.

100 0 100 200 MILES 500 600 700 800

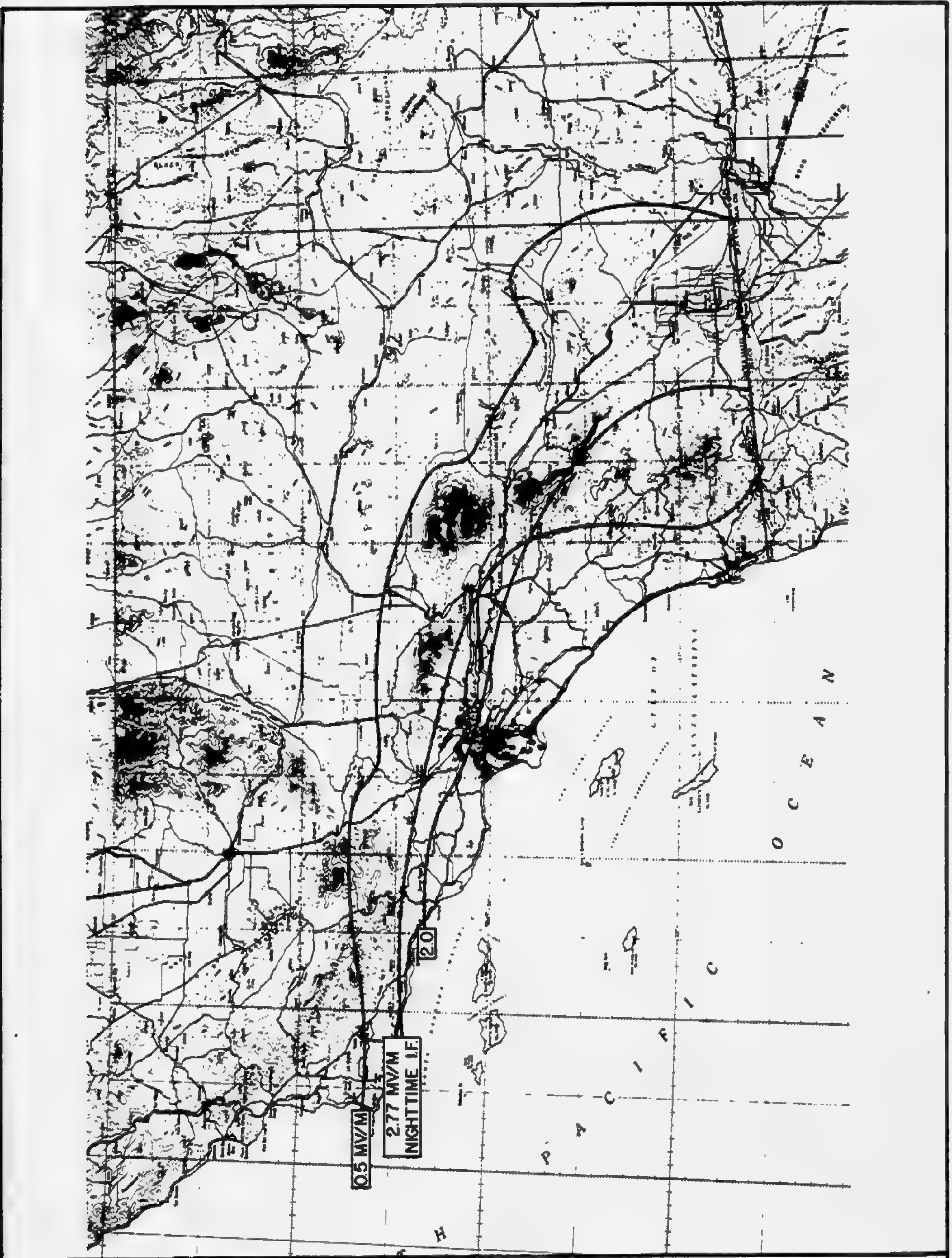
HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

1210 KC
SECONDARY NIGHTTIME COVERAGE
50 KW, DA-N
CLASS I STATIONS IN PHILADELPHIA & SAN DIEGO

580811

FIGURE 58


0.5 MV/M
2.77 MV/M NIGHTTIME I.F.
2.0
PACIFIC OCEAN
H

20 0 20 40 MILES 60 80 100 120

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

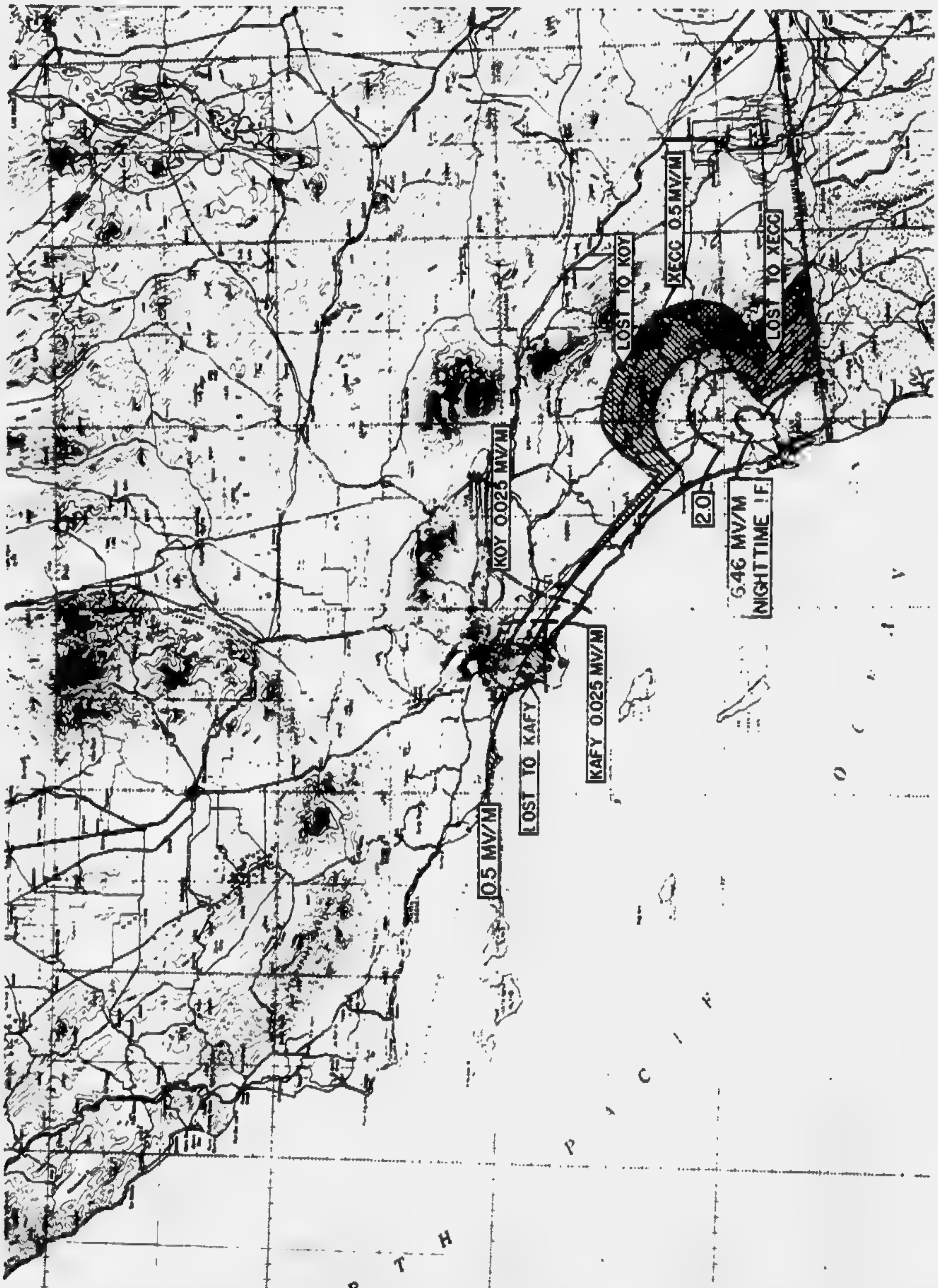
RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

890 KC COVERAGE

50 KW, DA-N

580811

FIGURE 6


XECC 0.5 MV/M
LOST TO KOY
LOST TO XECC
KOY 0.025 MV/M
2.0
6.46 MV/M
NIGHTTIME I.F.
KAFY 0.025 MV/M
LOST TO KAFY
0.5 MV/M
NORTH PACIFIC OCEAN

20 0 20 40 MILES 60 80 100 120

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

550 KC COVERAGE

1 KW, DA-1

580811

FIGURE 7

[1427]

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington 25, D.C.

In the Matter of)
) Docket No. 6741
Clear Channel Broadcasting in)
the Standard Broadcast Band)

REPLY COMMENTS OF CLEAR CHANNEL BROADCASTING SERVICE (CCBS)

Clear Channel Broadcasting Service (CCBS), by its attorneys, hereby files its comments in reply to the comments filed herein in response to the Further Notice of Proposed Rule Making released in the above-entitled proceeding on April 15, 1958.

1. In response to the Commission's Further Notice of Proposed Rule Making released April 15, 1958, some 51 separate comments were filed. The instant reply comments will discuss the positions taken by the various parties * with respect to each of the broad questions posed by this proceeding.

I. Is the Underlying Premise That Broadcast Service Is Seriously Inadequate and in Need of Improvement Still Valid Today?

A. Present Validity of Engineering Evidence Contained in the Record.

2. CCBS is unaware of any comments filed by other parties expressing disagreement with its position that the methods and procedures

[1428]

contained in Exhibits 109 and 263 are still the most accurate known means of depicting radio coverage.

3. It is noted that certain parties (*e.g.,* CBS Radio and Storer

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* Certain of the parties took no position on any of the issues posed in Docket 6741 (See comments filed by KFAB, Lincoln, Nebraska; WKRG, Mobile, Alabama and WMIE, Miami, Florida).

Broadcasting Company) urged in effect that the Commission should resolve the conflict between the standards contained in the rules and those set forth in Exhibits 109 and 263 prior to reaching a decision in this proceeding. Although CCBS agrees that the standards set forth in Exhibits 109 and 263 should be incorporated into the Rules, it is respectfully submitted that a resolution of the issues posed in this proceeding need not await this event. The Commission should proceed to resolve the issues posed in this proceeding and should, where appropriate, rely on Exhibits 109 and 263.

4. It is also noted that the comments filed by Westinghouse Broadcasting Company, Inc. stated that the engineering studies compiled in 1946 and 1947 "are now substantially outdated." CCBS does not believe the Westinghouse comments were intended as an attack on the validity of the engineering standards set forth in Exhibits 109 and 263 but were directed to the question of whether the record requires "updating" before a decision can be reached. CCBS submits that the Commission is in a position to make a decision based on the information contained in the present record and in its files, including that contained in the comments filed in response to its Further Notice of Proposed Rule Making released April 15, 1958.

[1429]

B. Extent [illegible]equacy of Broadcast Service in 1957 as Compared to 1947*

5. CCBS is unaware of any comments disputing the validity of the fact that although there has been a significant increase in the number of authorized broadcast stations since the record was closed in 1947, there has been no significant change in the extent of white areas and white area populations. The extent of the white areas decreased insignificantly between May 1, 1947 and January 1, 1957 (from 60.59% to 57.99% of the land area of the United States). The white area population increased during the same period from 23, 252,200 to 25,631,259 (CCBS Comments filed August 15, 1958, Pars. 19-26). It is noted that some of the original comments filed erroneously assumed that the 1957 white areas and

populations are confined to the West. The facts are that the bulk of the 1957 white area is located *west* of the Mississippi River (74.8%) whereas the bulk of the 1957 white area population (some 18 million of the 25 million or 71.3%) resides *east* of the Mississippi River (*Ibid*).

6. Accordingly, it is beyond dispute that the original premise underlying this proceeding (namely, the inadequacy of and need for improvement of broadcast coverage) is still valid today. In seeking a solution to the problem of inadequate broadcast coverage, it must be realized that the problem exists in the East as well as in the West.

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*All of these comments, unless otherwise stated, apply to nighttime conditions.

[1430]

II. What is the Best Method or Combination of Methods to Improve Broadcast Service?

A. Introductory

7. There appears to be no disagreement with the position that it is impossible to provide acceptable nighttime primary groundwave service to all of the present white areas and that accordingly, "improvement of service * * * must be provided, if at all, by new or improved skywave service" (Paragraph 41 of the Commission's April 15, 1958 Further Notice).*

8. There is disagreement among the parties as to the best manner in which new or improved skywave service can be provided to white areas and to white area populations. All of the comments which dealt with the question of improving service by providing new or improved skywave service suggested either (1) the use of higher power on and the retention of Class I-A clear channels or (2) retention of the present power ceiling of 50 kw and permitting additional fulltime assignments on Class I-A clear channels or (3) a combination of higher power and duplication.

B. Resolvement of the Higher Power Issue Should Not be Deferred

[1431]

9. Certain of the comments filed expressed approval of the Commission's April 15, 1958 proposal to (1) decide at this time upon the precise manner in which some of the Class I-A clear channels should be duplicated at 50 kw and (2) maintain the status quo with respect to the remaining Class I-A clear channels and reserve for future consideration the question of authorizing higher power on these channels.

10. It is respectfully submitted that, as pointed out in the August 15, 1958 comments filed by CCBS and others(e.g., CBS Radio, ABC, Westinghouse and NBC), the issues posed by this proceeding cannot logically be resolved in the proposed piecemeal fashion. The Commission should proceed first to resolve the question of the relative merits of "higher power" vs. "duplication" as a means of improving skywave service. In resolving this issue, the question is not which method would benefit the greatest number of stations. The Commission must decide which method would benefit the greatest number of people.

C. The Only Possible Means of Improving Service Where Needed is by Authorizing Higher Power on Clear Channels.

1. Higher Power Will Improve Service Where Needed

11. Based on the information contained in the present record and in the comments filed in response to the Commission's Further Notice of Proposed Rule Making released April 15, 1958, it is clear that duplication at 50 kw offers no solution to the national white area problem and that the only possible means of improving service to white areas is by the authorization of higher power for Class I-A clear channel stations (See CCBS Brief filed January 12, 1948 and CCBS Comments filed August 15, 1958). In this

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* Accordingly, it follows that if all white area populations are to receive some service, it must be furnished by stations located outside of the white areas. Thus, the arguments that service from "distant" stations is undesirable are in reality arguments that white areas should be without any service.

[1432]

connection, CCBS agrees with the Westinghouse Comments that it is of vital concern that service to white areas be improved because of the need for making available to all of the population National Defense and Disaster Communications.

12. CCBS believes that each and every one of the 24 Class I-A clear channel stations should be authorized to operate with higher power and that with respect to at least four Class I-B channels, the dominant stations should be authorized to operate with higher power. As a minimum proposal, CCBS in 1947 presented its so-called 20-station plan to which it still adheres as a minimum proposal. The details of the CCBS 20-station plan are summarized commencing on page 43 of the CCBS Comments filed herein on August 15, 1958.

13. It is noted that some of the comments filed in support of higher power * contain suggestions with which CCBS is not in agreement. Westinghouse posed the question as to whether or not any increase in power granted should be confined to skywave radiation. CCBS believes that such a proposal would result in a grossly inefficient use of power and would needlessly prevent any improvement of groundwave service (as an example of the improvement in groundwave service to white areas which would result from

[1433]

authorization of higher power, see Comments filed August 15, 1958 by WGN). For the same reasons, CCBS opposes the proposal that in those instances where higher power stations are authorized on a directional basis, the power in any given direction should be limited to 750 kw.* CCBS believes that the CBS Comments contain a reasonable and constructive engineering approach to the reduction of the present nighttime white areas. However, it is noted that CBS in some instances recommends power of 250 kw rather than 750 kw. CCBS is of the view that 250 kw is not sufficient power to provide a good grade of skywave service. NBC raises a question with respect to adjacent channel interference to 660 kc if WSM increased power. CCBS does not interpret NBC's comments to be an objection to the use of higher power by WSM or any other Class I-A station (See attached Engineering Statement by George A. Reynolds) and submits that the adjacent channel problems which would be created by higher power are insignificant and constitute no reason for refusing to authorize higher power.

---

*The comments filed in support of retaining clear channels and authorizing higher power are summarized in the Reply Comments filed simultaneously herewith by CCBS member WGN, which are hereby incorporated herein by reference.

14. The only comments filed August 15, 1958 purporting to show that higher power should not be authorized are without merit for the reasons set forth below.

E. B. Craney opposes the proposal to consider higher power on the basis of the 1938 Senate Resolution. This argument does not constitute a refutation of the fact that higher power will in fact improve service to white areas and ignores the fact that the 1938 Senate Resolution has no force or effect whatsoever (See CCBS August 15, 1958 Comments, page 31).

WCKY, Cincinnati, Ohio advocates that power be limited to 50 kw on all 24 clears and argues that this is required by Section 307(b) and that BMB surveys show that unshared use of Class I-A signals at night "represents a wasteful use of frequencies." Section 307(b) does not constitute a refutation of the fact that higher power will improve service to white areas. Nor does it constitute a legal bar to authorizing higher power. In fact, Section 301 contains an affirmative mandate to the Commission to promulgate rules and regulations which will insure that broadcast service is made available "to all the people of the United States." Section 303(c) gives the Commission express authority to authorize higher power. The WCKY argument about "wasteful use" of frequencies is based on false premises. The question before the Commission is how best to provide white areas with service. The WCKY arguments do not controvert the fact that the only practical way this can be done is through the use of higher power. The BMB surveys referred to by WCKY do not establish that no one listens to secondary service (See cross-examination of BMB witnesses in Docket 6741, Vols. 34-36), and also Exhibits 6-12 attached to CCBS Comments filed August 15, 1958 which establish the fact that skywave signals are listened to). In addition, the WCKY argument ignores the fact that there is universal agreement that the

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*As stated in its comments filed August 15, 1958, CCBS believes that higher power stations should operate on a directional basis only where directional operation is required as part of an overall plan to improve service.

[1435]

only way in which service can be provided to all of the white areas is through new or improved skywave or *secondary* service. * Accordingly, it is not a "wasteful" use of frequencies to maintain and improve skywave service. *DBA* states it is "firmly opposed to any increase in power" but assigns no supporting argument other than to refer, without specifying, to "reasons which have been made abundantly clear."

KING, Seattle, Washington and KPHO, Phoenix, Arizona ** urge that the Commission should "abandon any further consideration of higher power authorizations on clear channels." One argument advanced in support of this request is a reference to the "serious doubts" that higher power stations would, or could, be built and successfully operated at locations best suited to significant improvement of service in areas where it is now most deficient. The CCBS 20-station plan shows that the authorizing of higher power for stations at their present locations will improve service where it is needed. KING and KPHO also argue higher power should not be authorized as it would have an adverse economic effect on smaller stations. This argument is based on pure speculation and no supporting data is submitted. The same argument was unsuccessfully advanced during the hearings held in 1946 and 1947 (See CCBS Brief filed January 12, 1948, pages 58ff). The final argument of KING and KPHO is the two fold one that (1) higher power would not improve nighttime primary service and (2) areas gaining skywave service would be far removed from the station. The second part of this argument has already been disposed of (See WCKY, supra). The first part of this argument is simply not true (e.g., see WGN Comments filed August 15, 1958).

Storer Broadcasting Co. argues that only four channels are located geographically and spectrum-wise so as to justify maintenance of the status quo and later consideration for higher power. The arguments advanced do not controvert the fact that higher power will improve service to white areas whereas duplication at 50 kw will further degrade service to the white areas and forever bar any improvement. It is obvious that higher power on only four channels will not solve the national white area problem.

15. CCBS respectfully urges the Commission to study the CCBS detailed plan for the use of higher power in conjunction with other plans for the use of higher power advocated by other parties (e.g., see comments filed by CBS Radio) and to determine upon the basis of the public interest, convenience and necessity (1) the number of stations which should be authorized to operate with higher power and (2) the power at which they should be authorized to operate in order to provide at least four program services to the entire country. Any plan adopted should,

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*This comment applies with equal force to all of the comments urging duplication at 50 kw and/or opposing higher power on the grounds that the population served by skywave signals is too distant from the station to benefit from its programs. The choice is to provide secondary service or no service to the present white areas.

** The same arguments are advanced in the Joint Comments filed by KGEM, Boise, Idaho, et al.

as does the CCBS

[1437]

minimum 20-station plan, provide service to the white areas in the East as well as in the West.

2. Duplication at 50 kw Will Degrade Rather than Improve Service Where Needed

16. Several of the comments filed August 15, 1958 urged duplication at 50 kw of some or all of the too few remaining Class I-A clear channel frequencies.* Any plan to improve service must be a national one which will not only improve service in the West (where 74.8% of the white area is located) but also in the East (where 71.3% of the white area population resides). The comments filed by the proponents of duplication at 50 kw fail to demonstrate that duplication would result in an improvement of nighttime skywave service to the white areas and underserved populations which are located throughout the country. The fact is that duplication at 50 kw will only serve to provide more service to well-served city areas, will not improve service to the white areas and will in fact degrade further the already inadequate service rendered to white areas. It is also of utmost significance that such action would bar forever the use of higher power, which is the only practical means of improving service to the white areas.

17. A review of the comments filed in support of duplication reveals that they suffer the above-noted defects and that they constitute in the main an attempt to secure better facilities for individual private interests rather than an attempt to solve the national problem of inadequate broadcast service:

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*See Exhibits 1 and 2 of the CCBS Comments filed August 15, 1958 respecting the history of the reduction of the number of Class I-A clear channels from 40 to 24.

[1438]

WCIL, Carbondale, Illinois and others* support the proposal to duplicate some or all of the clear channels but fail to demonstrate that duplication would improve service to white areas.

WIKY, Evansville, Indiana supports duplication solely on the basis that it has a "real need" to increase power and obtain nighttime hours in order to remain competitive with other Evansville stations. WIKY does not even attempt to demonstrate how duplication would improve service to white areas.

KXYZ, Houston, Texas supports the proposal to duplicate 12 clears, asserts that more of the 24 clears should be duplicated and recommends that the additional stations should not be confined to the areas proposed by the Commission but should also be located so as to improve the facilities of existing stations in the major metropolitan areas. These comments, as are most of the comments filed in support of duplication, are not concerned with improving service to white areas but are concerned solely with providing facilities to others which are already adequately served. The comments filed by KOA, Denver and Exhibits 1 and 2 attached to the August 15, 1958 CCBS

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*E.g., see comments filed by Ralph J. Bitzer; Tri-Counties Broadcasting Co.; WCKY, Cincinnati; KDYL, Salt Lake City; The Daytime Broadcasters Association; WMC, Memphis; The National Farmer's Union; KOB, Albuquerque; KOOK, Billings, Montana; The National Association of Educational Broadcasters; KRIZ, Phoenix; KTLN, Denver; KING, Seattle; KPHO, Phoenix; KJBS, San Francisco & WJPG, Green Bay, Wisconsin.

[1439]

Comments demonstrate that duplication at 50 kw (1) brings more service to adequately served cities; (2) less service to underserved areas and (3) bars improvement of service to underserved areas through the use of higher power.

KFMB, San Diego, California advocates that instead of shifting from 540 kc to 550 kc, it should be permitted to operate on one of the following clear channel frequencies: 760 kc (WJR); 670 kc (WMAQ); 660 kc (WRCA); 1210 kc (WCAU) or 890 kc (WLS). KFMB's proposals relate solely to its own private interests and offer no solution whatsoever to the national problem of white areas.

WNYC, New York City makes no attempt to relate its comments to the national problem of white areas and merely urges that any final action in this proceeding should "make adequate provision for fulltime operation by WNYC."

Independent Television, Inc. supports the proposal to duplicate 12 of the clears and asserts that 1030 kc should be duplicated in the West and in the Milwaukee-Mekuon area. These comments are another example of the fact that those urging duplication are not concerned with improving service to white areas but are concerned solely with securing additional facilities for areas already adequately served.

KGEM, Boise, Idaho, et al. favor duplication in principal but offer no proof that duplication will improve service to white areas and express doubts as to whether Idaho and Montana should be specified as locations for

[1440]

additional Class I stations as the States "have no substantial population centers" which are capable of supporting such stations.

KXL, Portland, Oregon asserts that 750 kc should be duplicated in Portland and proposes three possible methods of duplication, two of which would not affect a future increase in power for WSB. As stated elsewhere herein, it may be feasible to authorize some duplication following the authorization of higher power.

E. B. Craney argues that it is a "tremendous waste" to assign any channel exclusively to any station within the United States. The only argument offered in support of his assertion is a reference to an advertisement of WSM, Nashville, Tennessee. This argument obviously fails to support the sweeping unwarranted generalization and also ignores the fact that there are many times during the year when atmospheric noise is such that much higher power is required to provide useable service within the area shown in the advertisement (Broadcasting, December 16, 1957, p. 49). The area shown in the advertisement is the natural trade area of Nashville plus additional fringe counties. Mr. Craney also asserts that the testimony in the record shows that clear channels can be duplicated without in any way causing interference and that such duplication "will wipe out all remaining white areas." However, Mr. Craney offers no record citations. The fact is that the record shows that duplication at 50 kw will (1) further degrade the present inadequate service afforded to rural areas and (2) forever bar the use of higher power and therefore, improvement of service to white areas (e.g., see Exhibit 339 of Docket 6741).

[1441]

Storer Broadcasting Co. argues that assigning only one nighttime station to a channel is "a demonstrably inefficient use of available spectrum" and that "It is apparent that if the entire country is to receive acceptable radio service on a reliable basis, provision will have to be made for much more extensive utilization of each channel." However, no plan of duplication is presented which purports to show how duplication will provide more service to white areas.

D. After the Higher Power is Resolved, Duplication Can Be Considered

18. As CCBS has pointed out in the past, once the Commission has determined upon the number of Class I-A stations which should be authorized to operate with higher power, it will then be in a position to determine the extent, if any, of daytime and nighttime duplication which should be authorized on clear channels. In this connection, CCBS believes that the proposals of ABC concerning the requirements concerning Class II stations that should be established with respect to (1) directional antenna designs; (2) power limitations and (3) geographical separations from the protected contour of the relevant Class I station constitute a sound engineering approach. However, it is submitted that the separations between Class I and Class II stations proposed by ABC

are too lenient with respect to permissible radiation values (See CCBS Briefs filed January 12, 1948 in Dockets 6741 and 8333 and CCBS Comments filed April 18, 1955 in Docket 8333).

[1442]

E. Consideration Should Also Be Given to Increasing Power for Other Classes of Stations

19. CCBS agrees with the comments filed by Storer Broadcasting Company which suggested that in addition to authorizing higher power for clear channel stations, the Commission should consider, as a means of expanding groundwave service, increasing the maximum power limitations on regional and local channels to the extent possible within international, engineering and economic limitations. A step in this direction was recently taken by the Commission when it amended the rules so as to accept applications for power of 1 kw daytime only by Class IV stations (See Report and Order released June 2, 1958 in Docket 12064).

III. Remaining Questions

A. Introductory

20. Certain other questions which do not conveniently fall into any of the previous groupings were raised in the comments filed by the various parties. These questions are discussed below.

B. Modification Proceedings

21. CCBS adheres to its position of agreement with the Commission's proposed conclusion (April 15, 1958 Further Notice, p. 22) that final decisions concerning modification of outstanding licenses should be deferred until the instant rule making proceeding is resolved. However, CCBS agrees with the comments filed by ABC and others that no outstanding license can be modified without a Section 316 hearing if the licensee involved

[1443]

does not consent to the modification. Until the Commission has resolved the issues in this proceeding, it is impossible to say what, if any, modifications will be necessary and if so, whether Section 316 hearings will or will not be necessary. CCBS will file a separate pleading in opposition to the DBA motion filed October 17, 1958 requesting that action be withheld on certain Class I-A renewal applications.

C. Additional Legislation

22. There appears to be no sound disagreement with the Commission's statement on page 23 of its April 15, 1958 Further Notice with respect to Issue 11 that it "possesses the requisite statutory power" to resolve the issues presented in this proceeding and that additional legislation is not required.*

D. Issue 7

23. Since Issue 7 of Docket 6741 relates to the question of higher power and hours of operation for Class II stations on Class I channels, the issue also relates to Docket 8333 (Daytime Skywave) and 12274 ("Uniform" or "Extended" hours). The comments filed by WCAR, Detroit, Michigan requested that Dockets 6741, 8333 and 12274 be consolidated. Comments filed by other parties (e.g., KCUL, Ft. Worth, Texas) ask the Commission to "reexamine its policies" with respect to the processing of daytime applications on Class I channels.

24. With respect to Docket 12274, the request to consolidate

it with Docket 6741 has been correctly denied in view of the fact that the Commission has issued a Final Report and Order terminating Docket 12274 (Report and Order released September 19, 1958).

25. With respect to Docket 8333, CCBS agrees that it should be consolidated with Docket 6741 and that the present "freeze" should be continued until the issues in both dockets have been resolved.

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* See paragraph 14 hereof, respecting comments of E. B. Craney and WCKY, Cincinnati. The 1938 Senate Resolution (S.Res. 294, 83d Congress) is of no force or effect whatsoever (See page 31 of CCBS Comments filed herein August 15, 1958).

E. NARBA

26. CCBS adheres to its recommendation that the Commission continue to urge ratification of the new NARBA signed November 15, 1950 and the Bi-Lateral agreement signed with Mexico on January 29, 1957 provided that the Commission take all necessary and proper steps to urge the State Department to negotiate with Cuba and other North American countries so as to (a) remove the limitations imposed by the 1950 NARBA on increases in operating power by certain United States Class I-A stations in the direction of certain foreign stations, and (b) remove the maximum power limitation on not less than four* Class I-B stations or increase the maximum power limitation to 750 kw.

27. In this connection, it is noted that ABC suggests that certain Class I-A frequencies could be converted to Class I-B on a domestic basis and still retain a I-A classification internationally. While this may be true in a narrow legalistic sense under the 1950 NARBA, CCBS notes

[1445]

that any domestic duplication of Class I-A clear channels would (1) degrade rather than improve service where needed and (2) make difficult, if not impossible, the continuation of an international I-A status for the channels affected whtn a new agreement is negotiated.

F. No Further Hearing is Needed

28. In connection with the question as to whether any further hearing is necessary prior to a final resolution of the issues posed by the instant proceeding, it is noted initially that the comments filed by Tri-Counties Broadcasting Co. (an applicant for a daytime station on 670 kc) assert that CCBS has "delayed" a decision in this proceeding for 13 years. This charge, which is not substantiated in any way by any allegation of fact, is completely without foundation. The fact is that

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* Those involved in the CCBS 20-station plan and such others as may be determined by the Commission.

CCBS has always been and still is in favor of a prompt resolution of this proceeding.

29. Several of the comments filed suggested that no final resolution of the issues posed by this proceeding could be reached in the absence of further proceedings to "update" the record. CCBS agrees with KSL that if further proceedings are required before a resolution of the higher power issue, the duplication issue likewise cannot be resolved without further proceedings. However, CCBS disagrees with the suggestions of CBS Radio, ABC and WLS, Westinghouse, NBC and Storer that further proceedings are necessary prior to a final resolution of this proceeding. The

[1446]

record clearly shows (1) that there is a pressing and long-standing need to improve service and (2) the views of all interested parties as to the manner in which service can and should be improved. The questions raised by those urging the need for further proceedings can be resolved on the basis of the information on file in this proceeding. If need be, the Commission is free to avail itself of any additional information contained in its files.

Respectfully submitted

CLEAR CHANNEL BROADCASTING
SERVICE

By________________________
Reed T. Rollo

____
R. Russell Eagan
of
Kirkland, Ellis, Hodson, Chaffetz &
Masters
800 World Center Building
Washington 6, D. C.

Its Attorneys

October [illegible], 1958

[1447]

ENGINEERING STATEMENT REGARDING POSSIBLE ADJACENT CHANNEL INTERFERENCE FROM WSM TO WRCA

Based upon Exhibit 109, there is at present no interference from WSM to WRCA's nighttime "B" service contour. In the event that WSM is allowed to increase its power to 750 kilowatts, our study indicates that the interference to WRCA nighttime "B" contour, based upon its present antenna pattern, would be almost negligible.

In the event the plan of the Commission were adopted, WRCA would change to a different directional antenna pattern in order to provide protection for Billings, Montana. Since we have no information as to exactly what type of antenna installation this would ultimately be, we cannot at this time determine the extent of this interference. We must assume that it will not be materially different from at present and that it will be possible for us to work it out between the two stations at that time.

WSM, INCORPORATED
By /s/ George A. Reynolds
Vice President and Technical Director

[JURAT, dated October 27, 1958]

[1448]

[Certificate of Service]

[1586]

[Received October 29, 1958]

REPLY COMMENTS OF WGN, INC.

WGN, INC., by its attorneys, hereby files its reply to the comments filed herein in response to the Commission's Further Notice of Proposed Rule Making released April 15, 1958.

1. In its original comments filed herein on August 15, 1958, WGN, Inc. (the licensee of Class I-A standard broadcast station WGN which operates on 720 kc at Chicago, Illinois) set forth the reasons for its opposition to the proposal contained in paragraph 55(b) of the April 15, 1958 Further Notice of Proposed Rule Making to convert WGN to a 50 kw Class I-B station.

2. The Commission's attention is respectfully directed to the fact that the following comments filed on or before August 15, 1958 agree with WGN, Inc. that 720 kc should be continued as a Class I-A frequency and that WGN should be authorized to operate with higher power.

a. Clear Channel Broadcasting Service (CCBS). * WGN, Inc. is a member of CCBS and subscribes fully to the CCBS comments filed

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* See also the Comments filed August 15, 1958 by CCBS members WHO and WHAS.

[1587]

August 15, 1958 and to the CCBS Reply Comments filed simultaneously herewith, both of which advocate that 720 kc remain a Class I-A clear channel frequency and that WGN be authorized to operate with higher power.

b. American Farm Bureau Federation. The Federation urges that the Commission should not duplicate 720 kc or any of the other 24 Class I-A clear channel frequencies and especially points out that none of the four clear channel frequencies located in Chicago, which is the "Nation's leading agricultural center" should be duplicated. The Federation also urges the use of higher power on all Class I-A clear channels in order to "improve service to the rural sections of the nation."

c. The National Grange. The Grange opposes the proposal to duplicate 720 kc and the other 11 channels proposed to be duplicated by the Commission. The Grange also urges the Commission to consider at an early date the authorization of higher power on all Class I-A clear channels.

d. National Council of Farmer Cooperatives. The Council urges that no action be taken which would allow the breaking down of clear channels and recommends that clear channel stations "be granted sufficient facilities to serve farm communities and other rural areas not presently enjoying the superior radio service available to all metropolitan areas."

e. CBS Radio. CBS urges that 750 kw be authorized for 17 Class I-A clear channel stations, including WGN on 720 kc.

f. ABC. ABC urges that 720 kc should be one of the frequencies considered for higher power operation.

g. Westinghouse. Westinghouse correctly emphasizes the public interest considerations involved in preserving clear channel frequencies for national defense communications and for disaster communications purposes. Westinghouse also correctly points out that it is doubtful that duplication of 720 kc and the other clear channel frequencies set forth in paragraph 55 of the April 15, 1958 Further Notice would result in an over-all gain in skywave service. The record clearly shows that duplication would degrade the service in presently underserved areas.

h. NBC. NBC correctly asserts that the record does not support the proposed duplication of 720 kc and the other frequencies set forth in paragraph 55 of the April 15, 1958 Further Notice and that only after the higher power question is resolved should it be determined whether some or all of the frequencies specified should be duplicated.

3. Accordingly, it is respectfully submitted that the public interest, convenience and necessity requires that 720 kc remain a Class I-A clear channel frequency and that WGN be authorized to operate with higher power.

Respectfully submitted,

WGN, INC.

By /s/ Reed T. Rollo

/s/ R. Russell Eagan

of

Kirkland, Ellis, Hodson, Chaffetz
and Masters
800 World Center Bldg., N.W.
Washington 6, D. C.

Its Attorneys

October 29, 1958

[Certificate of Service]

[1793]

THIRD NOTICE OF FURTHER PROPOSED RULE MAKING

1. Notice is hereby given of further proposed rule making in the above-entitled matter. For purposes of identification the proceedings to be conducted pursuant to this Notice shall be designated as Part III. The proceedings heretofore conducted pursuant to the Further Notice of Proposed Rule Making (FCC 58-350) issued by the Commission on April 15, 1958, have been designated as Part II. The proceedings heretofore conducted pursuant to the Order issued by the Commission on February 20, 1945, by which this proceeding was initiated have been designated as Part I.

The Proceeding: Basic Questions to be Resolved

2. The basic question to be resolved in the proceeding is what changes, if any, should be made in the use of the clear channels of the standard broadcast band which are available by international agreement for use of the United States. The Class I stations which operate on these channels are designated to render skywave (long range) service, as well as groundwave (short range) service. This permits them to render wide-area service and thus reach extensive land areas in the United States beyond the effective range of any other classes of radio stations. The United States has Class I-A priority for 25 stations on 25 of the 39 channels on which I-A priorities are recognized, and Class I-B priority for 34 stations on 20 of the 24 channels on which I-B priorities are recognized. 1/

3. Under the present rules, Class I-A channels with two exceptions are not shared at night by the Class I-A stations with any other stations within the continental United States. The Class I-B channels are so allocated that the Class I-B stations share the same channel with one or more other United States stations and with foreign stations. Thus, listeners are afforded a relatively high degree of protection from interference in reception of Class I-A stations and a lesser, though substantial, degree of protection from interference in receiving Class I-B stations.

[1794]

The skywave (long range) service furnished by clear channel stations is the only nighttime standard broadcast service now available to approximately 25,631,000 persons in an area in the aggregate of about 1,725,000 square miles, which comprises somewhat more than half the land area of the continental United States, with the exception of Alaska and Hawaii.

4. The fundamental conflict in the proposals for revision of the present Rules on clear channel usage lies between sustaining or increasing the capacity of the Class I stations to render wide-area service and increasing the number of stations permitted on these channels. 2/

1/ The apparent summation of 63 channels (39 plus 24) on which I-A or I-B priorities are recognized follows from the fact that on three channels (640, 1010, and 1540 kc) both I-A and I-B priorities are recognized in different countries. The International Agreements designate 60 clear channels on which I-A and I-B priorities are delineated.

2/ The Committee on Broadcasting of the Institute of Radio Engineers published, prior to the adoption of present rules, a report on "The Clear Channel in American Broadcasting" in which the following conclusions were reached with respect to shared and clear channels. See, e.g., 21 Proceedings of the Institute of Radio Engineers 5 (1933).

"1. The field of the shared channel is to afford broadcast service to important detached centers of population, such as our cities and large towns.

"2. The field of the clear channel is to afford service to those vast intervening areas in which the density of population is so low that a broadcast service could not otherwise be supported and in addition to a single large center."

The consequences of increasing the number of shared channels at the expense of cleared channels are summarized in the report as follows:

"1. Decreasing the number of clear channels by assigning additional stations (for nighttime operation) to channels now used by only one station at a time would have the effect of affording additional services to certain localized urban groups but at the expense of decreasing the service to rural listeners and to those at remote points.

"2. Increasing the number of clear channels at the expense of the shared channels would have the opposite effect, assuming that assignments for the stations thus displaced could not be provided for on the remaining shared channels."

The principles thus stated in 1933 remain applicable today.

The April 15, 1958 Notice

5. The April 15 Notice (FCC 58-350) invited comments on proposals to open 12 specified Class I-A channels for additional unlimited time assignments, to reserve for later determination proposals to increase power on the remaining Class I-A channels, and to leave unchanged the Class I-B channels listed in Section 3.25(b) of the Rules.

6. On five of the 12 channels proposed for additional unlimited time assignments it was proposed to assign a new directionalized Class I station and require the existing Class I station to directionalize, with corollary reduction in service, with the result that each station would afford mutual protection from interference to the areas served by the other. On the other 7 channels it was proposed to assign unlimited time Class II stations in underserved areas.

Tentative Conclusions on the April 15, 1958 Notice

7. Comments in response to the April 15, 1958 Notice were filed by some 60 parties and reply comments were filed by about 44 parties. On the basis of the comments which have been filed it is shown that, although permitting the licensing of additional stations, the proposals would result in substantial reduction of the existing ground wave and skywave service, with the result that substantial new "white areas" would be created in which no ground wave service would remain available from any station and that other areas would be reduced in the number of services received from four, three or two ground wave

services to a single ground wave service. In addition, substantial dislocations would obtain of present skywave service which would not be fully compensated by new operations. Also, we note that, a substantial number of assignment counterproposals have been made which fail to accomplish any substantial increase in ground wave service to white areas. Accordingly, it appears desirable in light of the comments to secure additional data in response to a further notice before proceeding toward a conclusion of the proceeding.

8. Although the Commission in its April 15, 1958 Notice did not invite comments on the question of increased power for Class I stations, some parties addressed themselves to it. 1a/ We do not discount the fact that historically the present power limit of 50 kilowatts was determined in substantial measure upon early radio equipment, whereas more powerful transmitting apparatus has now become readily available, the use of which in the United States could substantially increase the signal strength of the present nighttime skywave service on the clear channels and thus generally improve the signal-to-interference ratio thereof. We observe, however, as the record clearly shows, that the scope of the skywave service depends upon many variables including the type of transmitting antenna and the varying atmospheric noise levels as well as the broadcast station power. The record shows that the most satisfactory present skywave service does not necessarily coincide with the strongest signal areas but is instead realized in those geographic areas, with relation to the stations, where the absence of interference, of signal fading, and of atmospheric noise permits the use of optimum receiver sensitivity for adequate reception. The Commission's Exhibit 109, herein, which is based on the results of three Industry-Government Committees, includes criteria for three

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1a/ Other parties indicated their desire to file comments on higher power at such time as the Commission invited updated comments on this mode of clear channel reallocation.

grades of skywave service, grading off in quality with respect to freedom from noise and interference. 3/ These are all based upon the percentage of nights that radio service is realized throughout the entire year and are thus weighed down statistically by the perturbation of summertime static, the atmospheric noise resulting from the thunderstorms prevalent during the summer months. Thunderstorm activity is virtually absent during the winter months according to data on the seasonal distribution of atmospheric noise 4/ which shows reduction of approximately 19 decibels (nearly 100 times) during winter months as compared to summer. It follows that in many areas reception is now generally noise-free and satisfactory during winter although quite unsatisfactory during summer -- thus depressing the grade of service on an annual norm basis -- and that an approximately hundredfold increase in power to five megawatts would be necessary during summer months to secure noise-free service equivalent to that now available to the existing power during the winter months. However, nighttime conditions extend for several hours more each day during winter at most latitudes in the United States, than during summer. Thus nighttime skywave signals are of maximum quality at the time when maximum daily use thereof can be made. Conversely, during the long summer days, the daytime groundwave service

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3/ Skywave service of a clear channel station, under Exhibit 109, is considered to be limited by the noise from electrical apparatus to the 250 microvolt per meter contour in rural areas, (Para. B 3(c)(5)) and to 0.5 millivolt per meter contour in urban areas (Para. F. of Exhibit 109).

4/ Noise is highest in summer and lowest in winter at temperate latitudes; varies with frequency, decreasing with increasing frequency; and varies with geographic location, highest levels being encountered in equatorial regions and the lowest levels in the polar regions. Worldwide Radio Noise Levels Expected in the Frequency Band 10 Kilocycles to 100 Megacycles: National Bureau of Standards, NBS Circular 557, August 1955.

[1797]

is, on balance, of increasing significance. Already, basically free of station interference, groundwave service during these hours has been further augmented by the assignment of daytime stations in various parts of the country for operation during the hours between local sunrise and sunset, and the assignment of increased facilities to unlimited time regional and local stations during these hours. As a cumulative result, multiple groundwave services are available during daytime hours in most areas and there is almost no area to be found within the entire United States, excepting possibly Alaska and Hawaii, wherein there is an absence of all service meeting the groundwave service standards formulated during the course of the proceedings herein.

9. These considerations in our view offset to an extent the arguments offered in support of authorizing higher power for Class I stations. However, before reaching final decision on higher power, we deem it appropriate to afford an opportunity for all interested parties to submit such additional comments and data as will reflect changed conditions since 1946 when the basic record on this aspect of the proceeding was made.

10. During nighttime hours more than half the land area of the United States receives no groundwave service from any stations. Termed "white area", such is comprised principally of the rural and smaller urban communities throughout the U. S. As of May 1947, the total amount of "white area" was 1,802,665 square miles which amounted to 60.59% of the total land area. Based on the 1940 Census a population of 23,252,000 lived in white areas. Between May 1947 and January 1957, fulltime stations increased from 1,339 to 1,875. The decrease in white area, however, has not been significant. The January 1957 white area totals 1,725,095 square miles which represents 57.99% of the total land area. The population residing therein has increased to 25,631,259. With reference to geographical distribution, while the bulk of such area (74.8%) is located west of the Mississippi River the bulk of the 1957 population residing therein (18,277,835 or 71.3%) lives east of the Mississippi River. None of the figures include Alaska or Hawaii. A map of the population distribution according to the 1950 Census is attached as Appendix A.

11. Principal areas with no groundwave service during nighttime hours are located in northern New England, in the more mountainous regions of the Middle Atlantic States, throughout the South, in the northern-most part of the Great Lakes Area, within the great plains, and in many mountainous areas of the West. A map of nighttime groundwave service is attached as Appendix B.

12. The April 15, 1958 Notice stated that there are severe limits on the possibilities for reducing white areas by creating new groundwave coverage from new or expanded standard broadcast stations. This limitation is essentially basic due to the necessary limitation on the number of channels available for standard broadcasting and the disruptive interference which occurs in such great areas when two or more stations transmit during nighttime

hours on the same frequency at the same time. Satisfactory reception in the presence of interference is limited to those areas sufficiently close to a transmitting antenna to receive a signal strong enough to buffet out the ambient interference on the channel. It has been ascertained that the service area to interference area ratio (area efficiency) of the generally shared (regional) channels is less than one percent, despite the use of directional antennas to minimize interference among stations. Thus we conclude that we should limit our consideration, with respect to a sharing of the clear channels, to the assignment of new stations in specifically delineated geographical areas which could be determined upon the basis of need for the new or additional service and availability of an assignment to that area with minimum impact on the existing service under the service and interference criteria of Part I hereof.

The Further Proceeding

13. In this part (Part III) of the proceeding the Commission will give consideration to two matters. First is amendment of the Rules so as to provide for the assignment of new Class II stations on each of the frequencies listed in Table I attached hereto. Each new Class II

station on these frequencies would be licensed within a prescribed geographical area; viz., within a specified state or within one of two or more jointly specified states as set forth completely in Table I attached and also shown on the map attached hereto as Figure I. The Class I stations now licensed to operate exclusively in the United States on these channels, listed in Table I, would continue to operate with 50 kilowatts of power but would share operation on the channel with one newly licensed station located in the designated area. Each new station licensed under the amended rule would be required to install a directional antenna 5/, designed to control the direction of radiation of energy in order to provide a satisfactory degree of protection from harmful interference to the existing service in the United States on these channels. In order to secure maximum coverage by the new station each new license would authorize operation with not less than 10 kilowatts of power.

14. The operations of KFAR, Fairbanks, Alaska, on 660 kilocycles and of KOB, Albuquerque, New Mexico, on 770 kilocycles are deemed to meet the criteria of this notice for purposes herein, with no additional assignments on these two channels. These are the two exceptions concerning channels listed in paragraph (a) of Section 3.25, to which reference is made in an above paragraph.

5/ FCC, Office of Chief Engineer, Technical Research Division, T.R.R. Report 1.2.7. September 6, 1957: Suppression performance of directional antenna systems in the broadcast band.

[1799]

15. In the case of each of the 23 remaining channels, some portion or all of the state or states selected for the new Class II assignments is more than 1250 miles distant from the existing Class I station on the channel. Under this criterion there follows, from the geographical distribution of the existing Class I stations, the suitability of a greater number of channel assignments in the western states as compared with the central states, and in the central states as compared with the eastern

states; thus other factors being equal, the easternmost state or group of states suitable under the criterion is indicated on Table I and Figure I in each instance. Consideration has also been given to: (1) the need for protection of foreign station coverage, in accordance with the North American Regional Broadcasting Agreement and the Agreement between the United States of America and the United Mexican States concerning Radio Broadcasting in the Standard Broadcast Band; (2) the need for adjacent channel interference protection; (3) the selection of a state or states in which the particular channel could be assigned anywhere within a wide area rather than in only a few limited locations; (4) the avoidance of adjacent channel assignments in adjacent states or in adjacent groups of states, to avoid interdependence between new assignments in adjacent regions; and (5) the placement of the new assignments in many states rather than multiple assignments in a few states.

16. There are indicated in the maps attached as Exhibit C examples of the general impact upon the present capacity of the channels for skywave service resulting from 10 kilowatt directional antenna operation of new Class II stations at centralized geographic locations under Table I. These are included in the Notice for illustrative purposes only, to show the general effect of the assignments listed therein. They should not be considered to constitute a determination that the capacity of these channels should be so delimited. A decision on those issues in this proceeding relating to sharing of channels, as indicated above, will not be reached prior to our determination upon the other issues herein.

17. As stated above, the Commission has decided to afford all interested parties an opportunity, at this stage of the proceeding, to provide comments and data concerning proposals that clear channel stations be authorized power in excess of the present maximum of 50 kilowatts. While the Commission is not persuaded, on the basis of the present record, that the authorization of higher power would be in the public interest, we defer final decision on the proposals for higher power until we have an opportunity to review the entire question in the light of updated comments and data.

18. All interested persons are invited to file, on or before November 20, 1959, comments concerning:

[1800]

(1) the plan of assigning new unlimited time stations to the clear channels listed on Table 1 and reflected in Figure 1, attached hereto.

(2) the use, by Class I-A clear channel stations, of power in excess of 50 kw, under any of the proposals of record in this proceeding or any other proposals which interested parties may desire to submit. Parties desiring to do so may incorporate by reference submissions made heretofore in this proceeding.

Comments in reply to the original comments may be filed within thirty days from the last day for filing said original data, views, or arguments. No additional comments may be filed unless (1) specifically requested by the Commission, or (2) good cause for the filing of such additional comments is established. The Commission will consider such comments prior to taking final action in this matter. The requisite statutory authority is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

19. In view of the comprehensive nature of the proceeding herein and the desirability of concluding the proceeding as soon as possible it is desired that parties submit as much evidence as possible in the exhibits which they plan to submit. All proposals and counterproposals made in the comments should supply specific data relied upon to establish the need for, and the extent of desired new service which would be provided in the particular community or communities affected; and the resulting interference limitation arising therefrom upon existing service through the confusions of the received signals.

20. In accordance with the provisions of Section 1.54 of the Commission's Rules and Regulations, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission

FEDERAL COMMUNICATIONS COMMISSION
Mary Jane Morris
Secretary

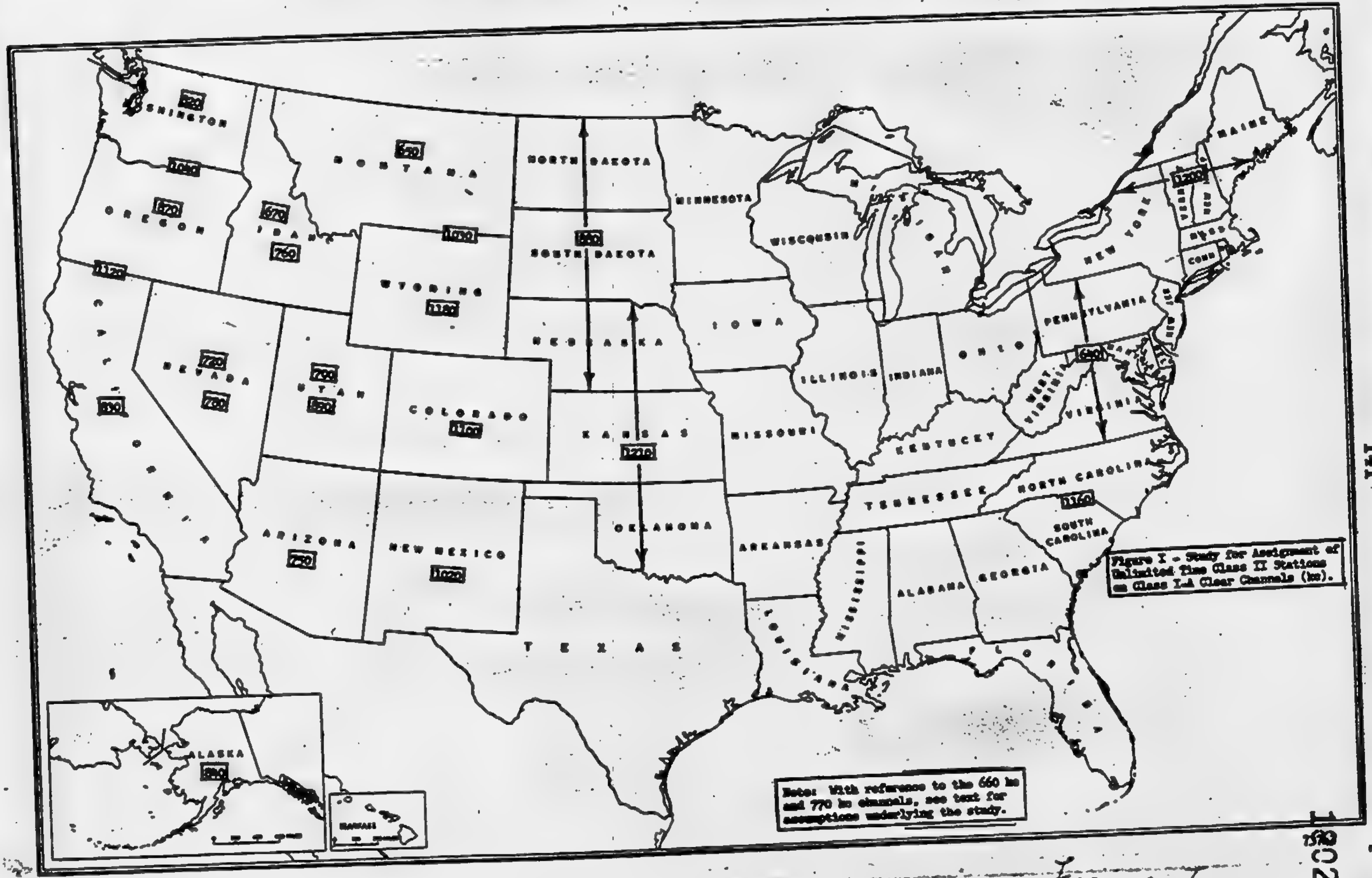
Attachments
Adopted: September 18, 1959
Released: September 22, 1959

[1801]

TABLE I

New Class II Unlimited Time Assignments on Clear Channels

Channel (kc)	Existing Class I Station	State in which Class II Assignment Proposed
640	KFI, Los Angeles	Pennsylvania or Maryland or Virginia or West Virginia
650	WSM, Nashville	Montana
660	WNBC, New York	See par. above
670	WMAQ, Chicago	Idaho
700	WLW, Cincinnati	Utah
720	WGN, Chicago	Nevada
750	WSB, Atlanta	Arizona
760	WJR, Detroit	Idaho
770	WABC, New York	See par. above
780	WBBM, Chicago	Nevada
820	WBAP/WFAA, Fort Worth/ Dallas	Washington
830	WCCO, Minneapolis	California
840	WHAS, Louisville	Alaska
870	WWL, New Orleans	Oregon
880	WCBS, New York	North or South Dakota or Nebraska
890	WLS, Chicago	Utah
1020	KDKA, Pittsburgh	New Mexico
1030	WBZ, Boston	Montana or Wyoming
1040	WHO, Des Moines	Oregon or Washington
1100	KYW, Cleveland	Colorado
1120	KMOX, St. Louis	California or Oregon
1160	KSL, Salt Lake City	North or South Carolina
1180	WHAM, Rochester	Wyoming
1200	WOAI, San Antonio	New York or Vermont or New Hampshire or Maine
1210	WCAU, Philadelphia	Kansas or Nebraska or Oklahoma


WASHINGTON
820
1080
OREGON
670
1120
IDAHO
670
760
MONTANA
640
1030
WYOMING
1180
NORTH DAKOTA
890
SOUTH DAKOTA
NEBRASKA
CALIFORNIA
830
NEVADA
720
780
UTAH
700
850
COLORADO
1100
KANSAS
1210
ARIZONA
720
NEW MEXICO
1020
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TEXAS
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GEORGIA
FLORIDA
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1160
VIRGINIA
WEST VIRGINIA
680
PENNSYLVANIA
NEW YORK
MAINE
1200
VERM
N H
MASS
CONN
N J
ALASKA
880
HAWAII

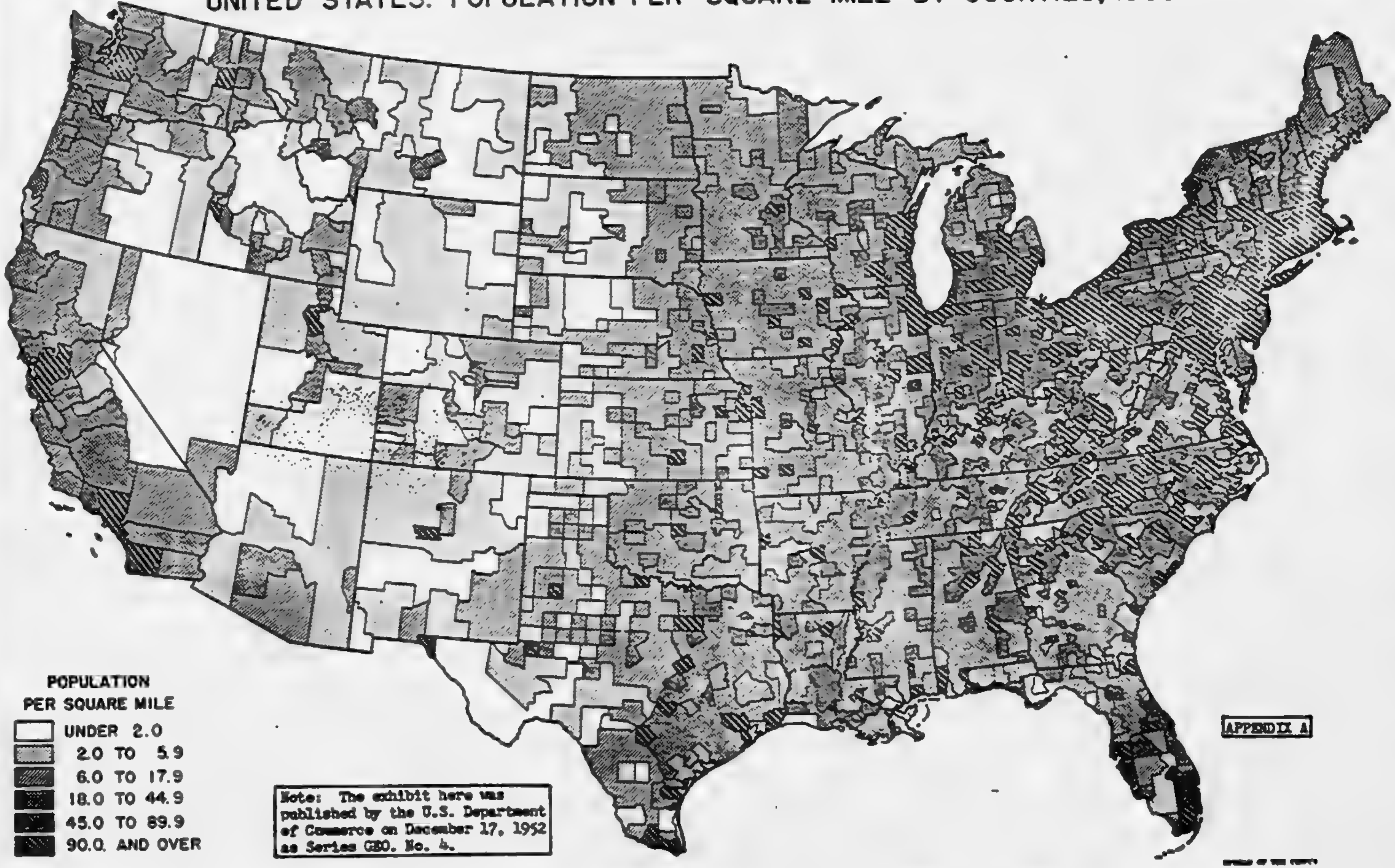
Figure I - Study for Assignment of Unlimited Time Class II Stations on Class I-A Clear Channels (kc).

Note: With reference to the 660 kc and 770 kc channels, see text for assumptions underlying the study.

Figure I

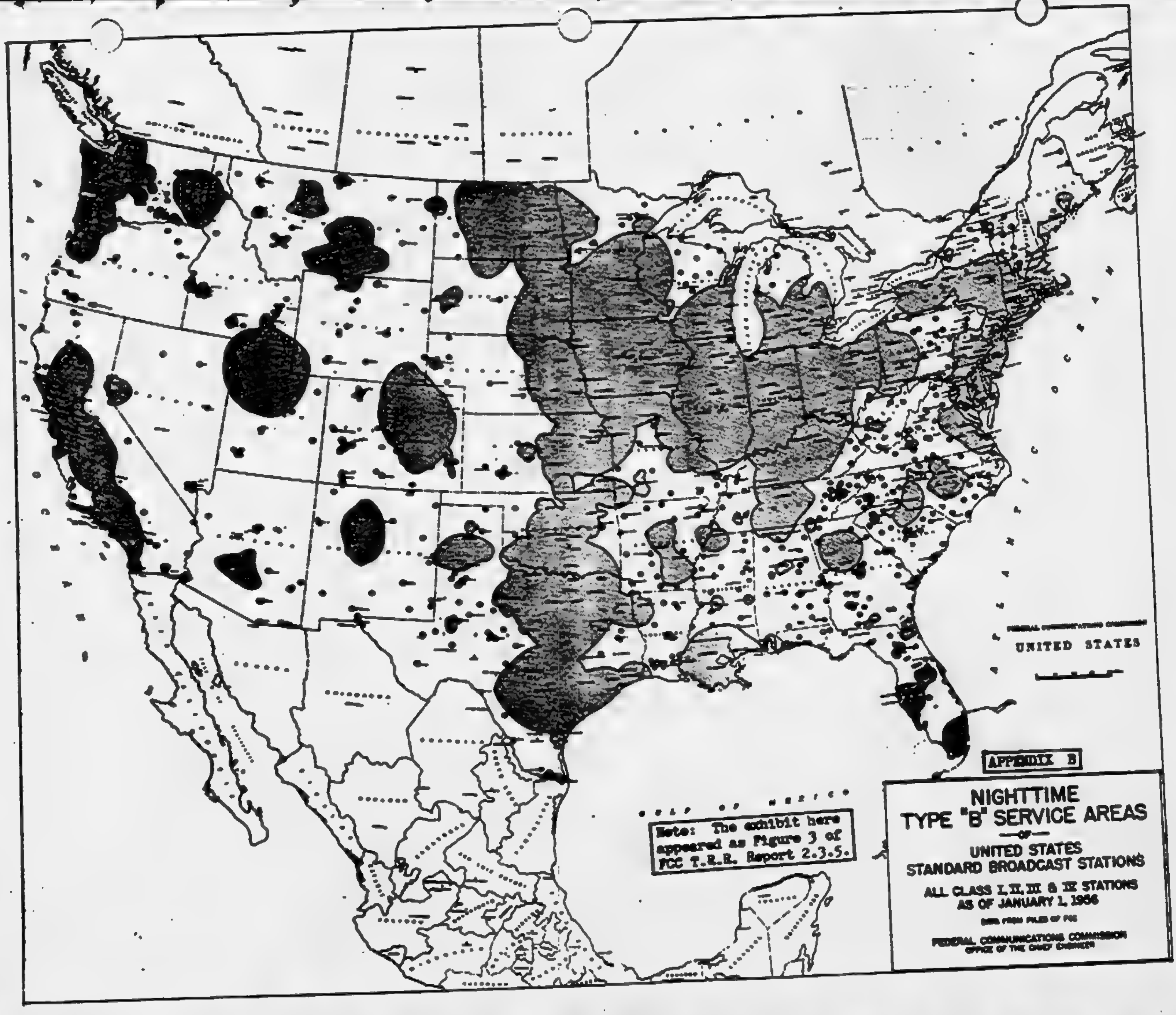
140

UNITED STATES: POPULATION PER SQUARE MILE BY COUNTIES, 1950


POPULATION
PER SQUARE MILE
☐ UNDER 2.0
▨ 2.0 TO 5.9
▨ 6.0 TO 17.9
▨ 18.0 TO 44.9
■ 45.0 TO 89.9
■ 90.0 AND OVER

Note: The exhibit here was published by the U.S. Department of Commerce on December 17, 1952 as Series GEO. No. 4.

APPENDIX A



APPENDIX B

NIGHTTIME
TYPE "B" SERVICE AREAS
—OF—
UNITED STATES
STANDARD BROADCAST STATIONS

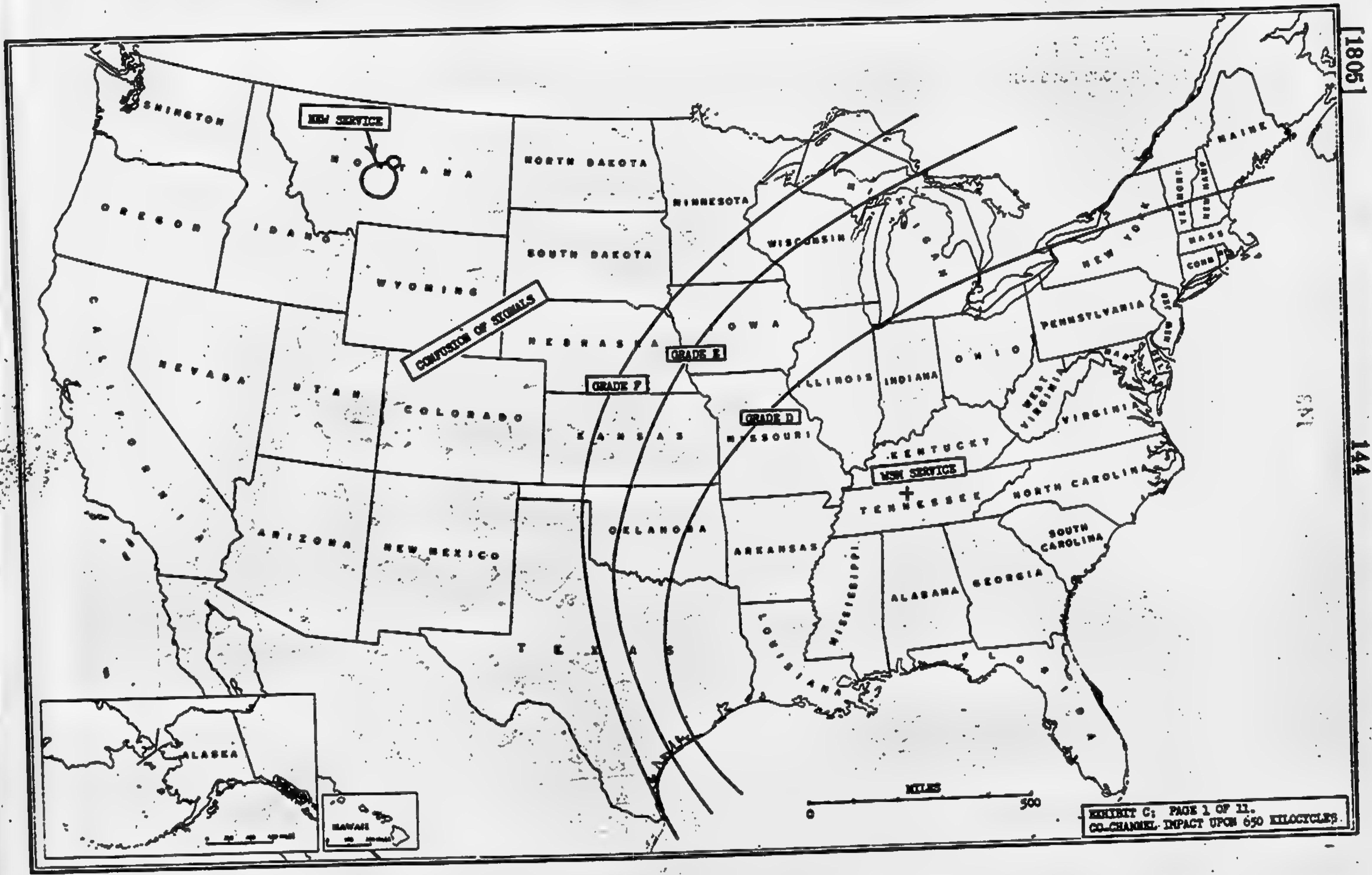
ALL CLASS I, II, III & IV STATIONS
AS OF JANUARY 1, 1956

DATA FROM FILES OF FCC

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE CHIEF ENGINEER

Note: The exhibit here appeared as Figure 3 of FCC T.R.R. Report 2.3.5.

FEDERAL COMMUNICATIONS COMMISSION
UNITED STATES
GULF OF MEXICO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IOWA
NEBRASKA
CONFUSION OF SIGNALS
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EXHIBIT C; PAGE 1 OF 11.
CO-CHANNEL IMPACT UPON 650 KILOCYCLES.

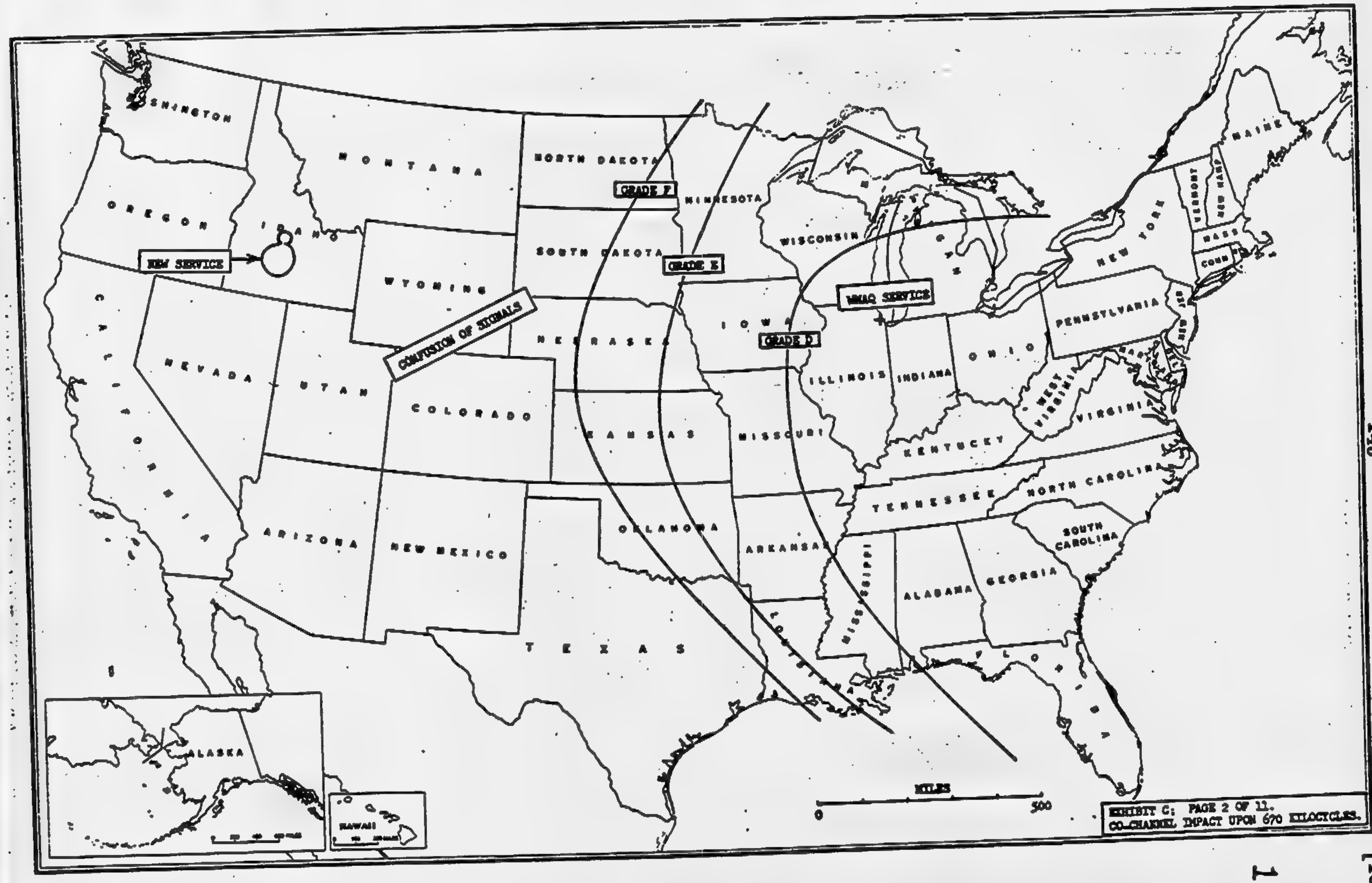
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EXHIBIT C; PAGE 2 OF 11.
CO-CHANNEL IMPACT UPON 670 KILOCYCLES.

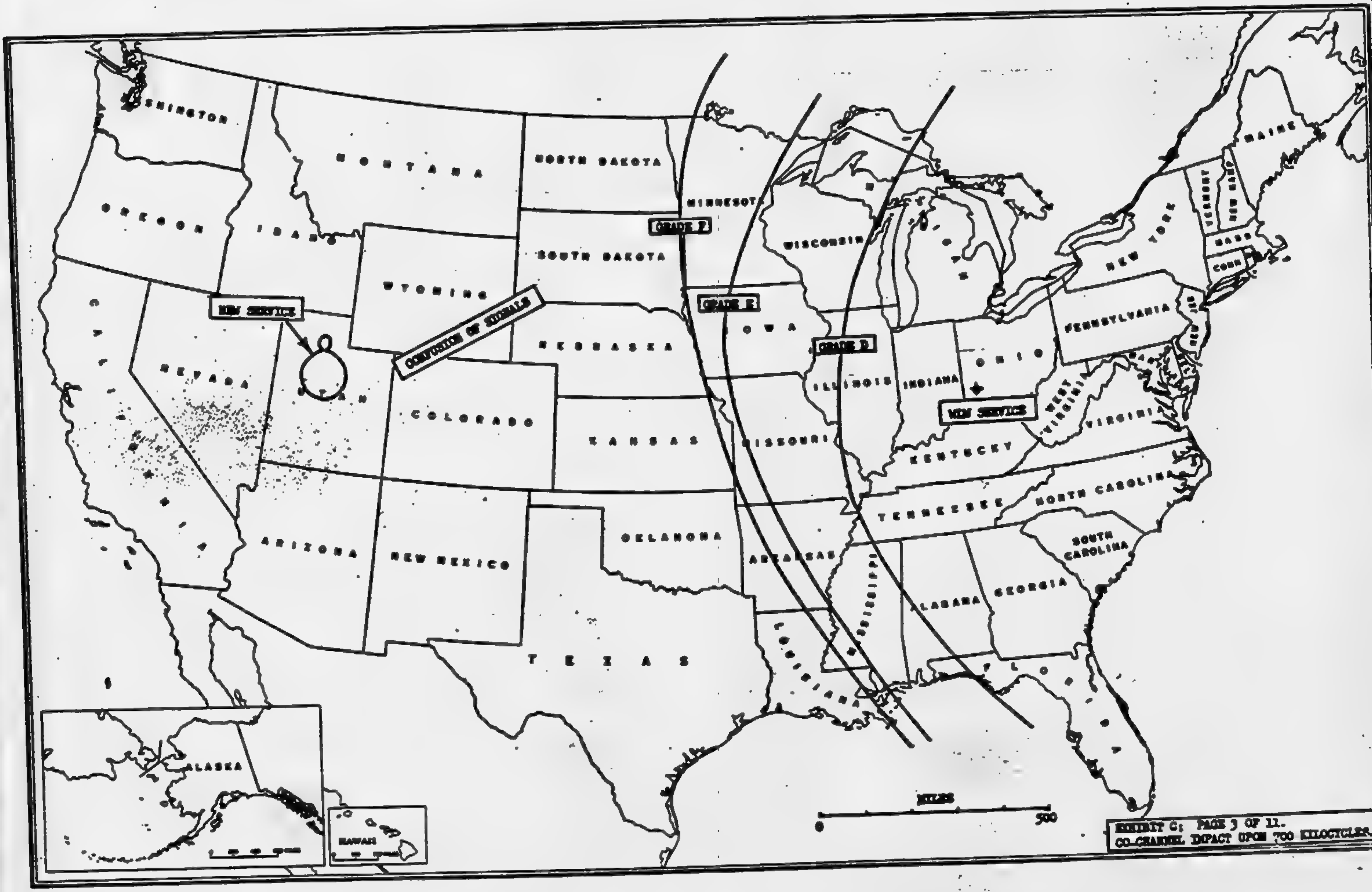
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EXHIBIT C; PAGE 3 OF 11.
CO-CHANNEL IMPACT UPON 700 KILOCYCLES.

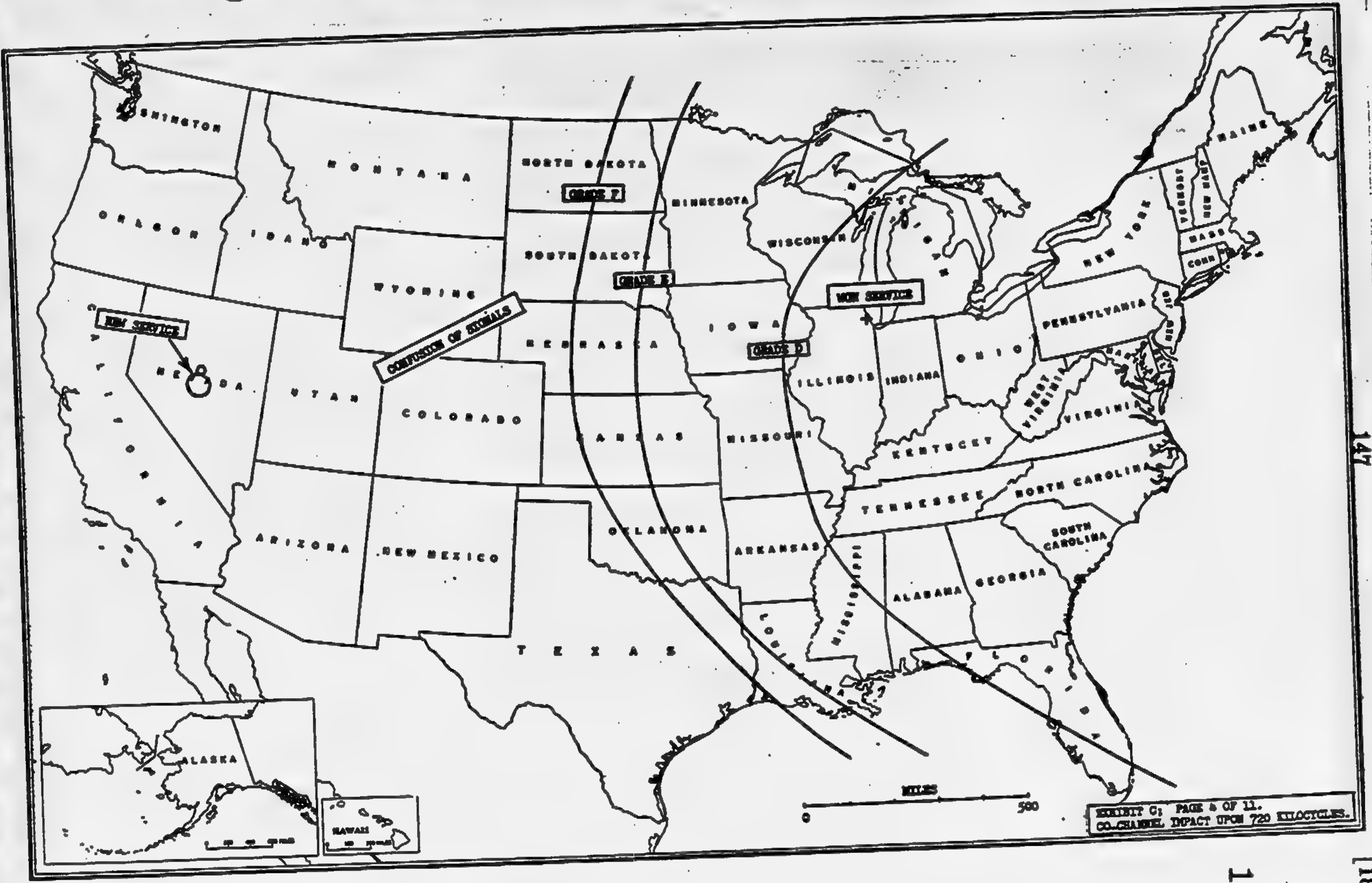
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EXHIBIT C; PAGE 4 OF 11.
CO-CHANNEL IMPACT UPON 720 KILOCYCLES.

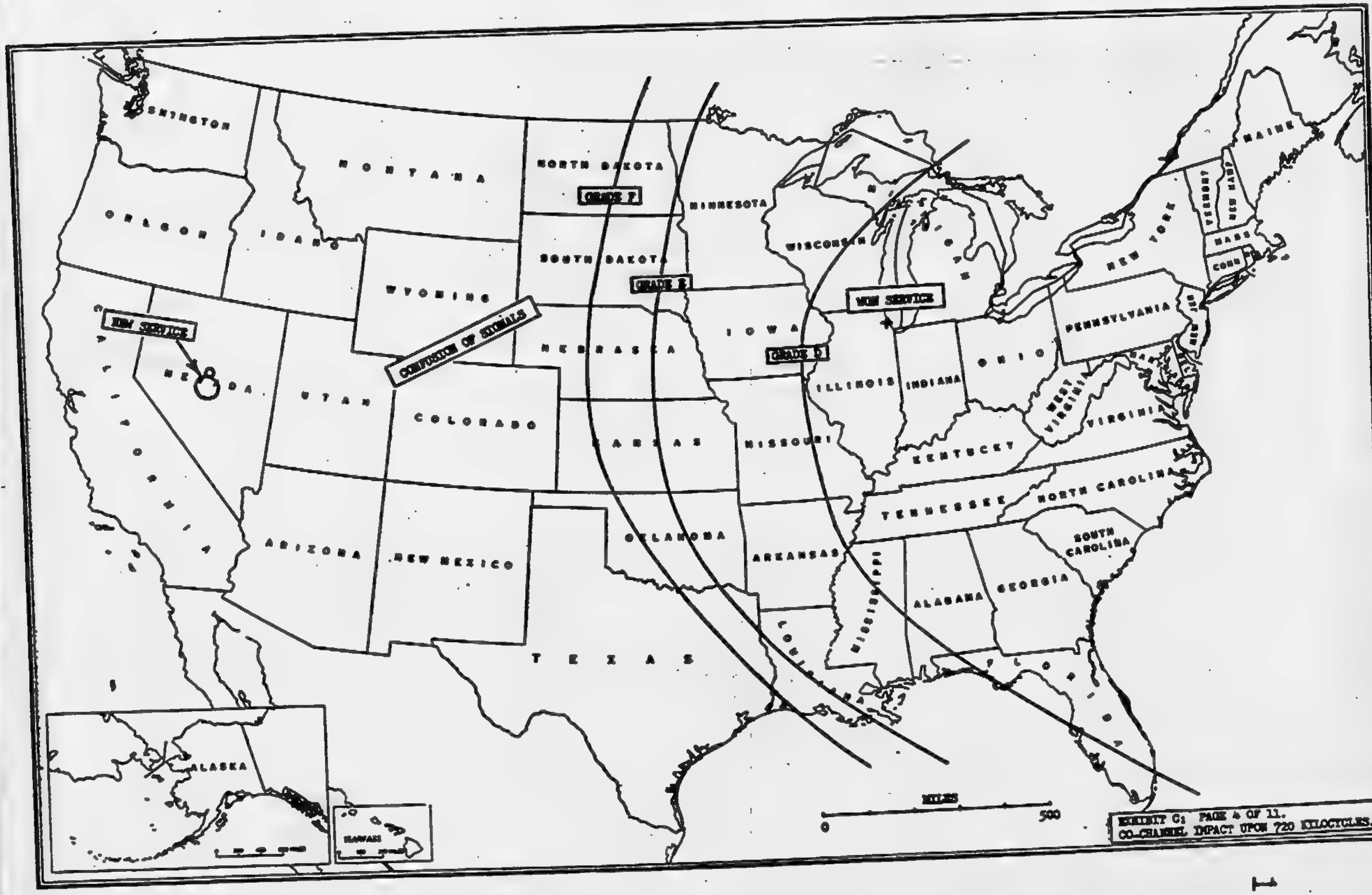
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EXHIBIT C: PAGE 4 OF 11.
CO-CHANNEL IMPACT UPON 720 KILOCYCLES.

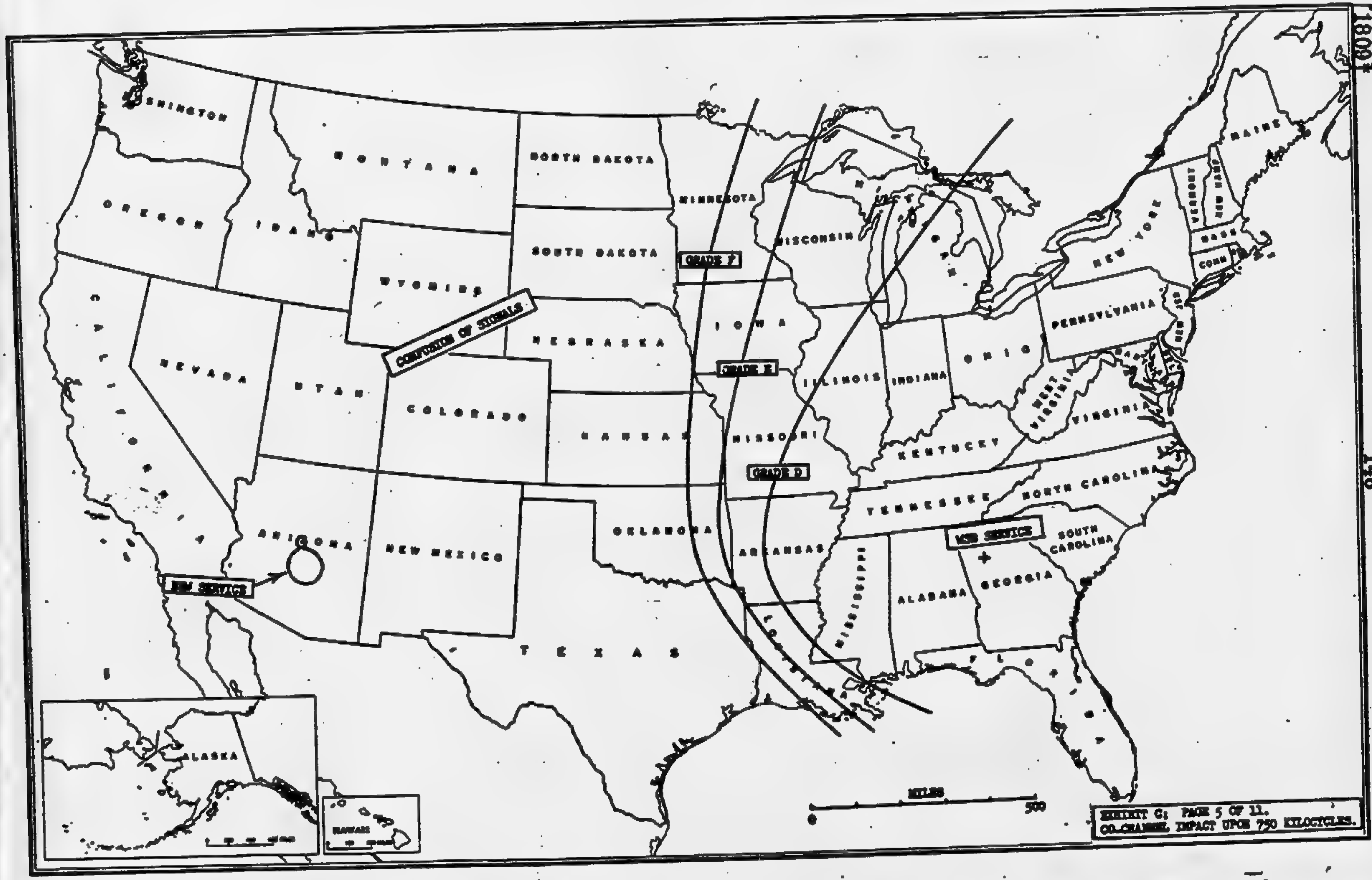
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EXHIBIT C; PAGE 5 OF 11.
CO-CHANNEL IMPACT UPON 750 KILOCYCLES.

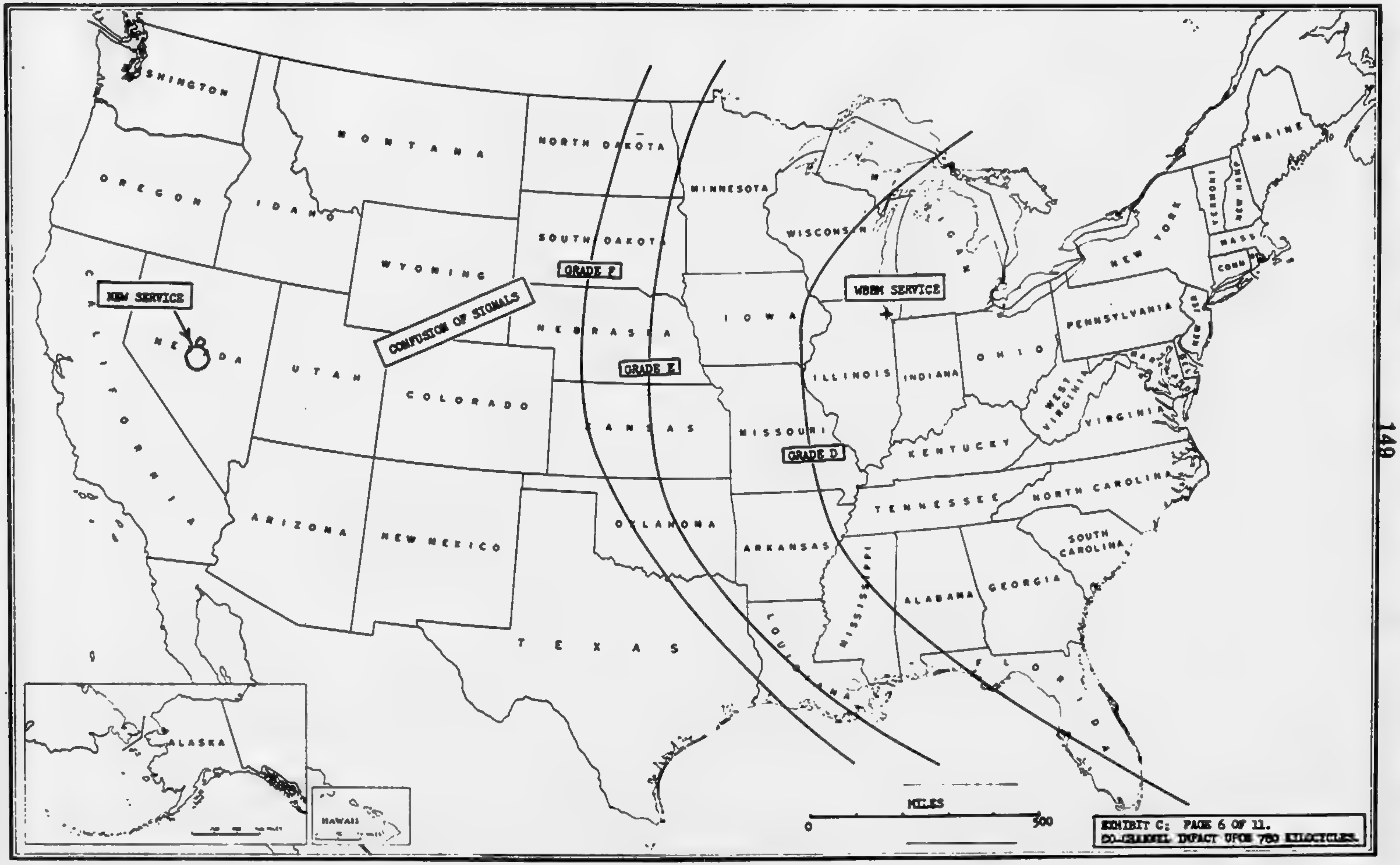
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EXHIBIT C; PAGE 6 OF 11.
CO-CHANNEL IMPACT UPON 780 KILOCYCLES.

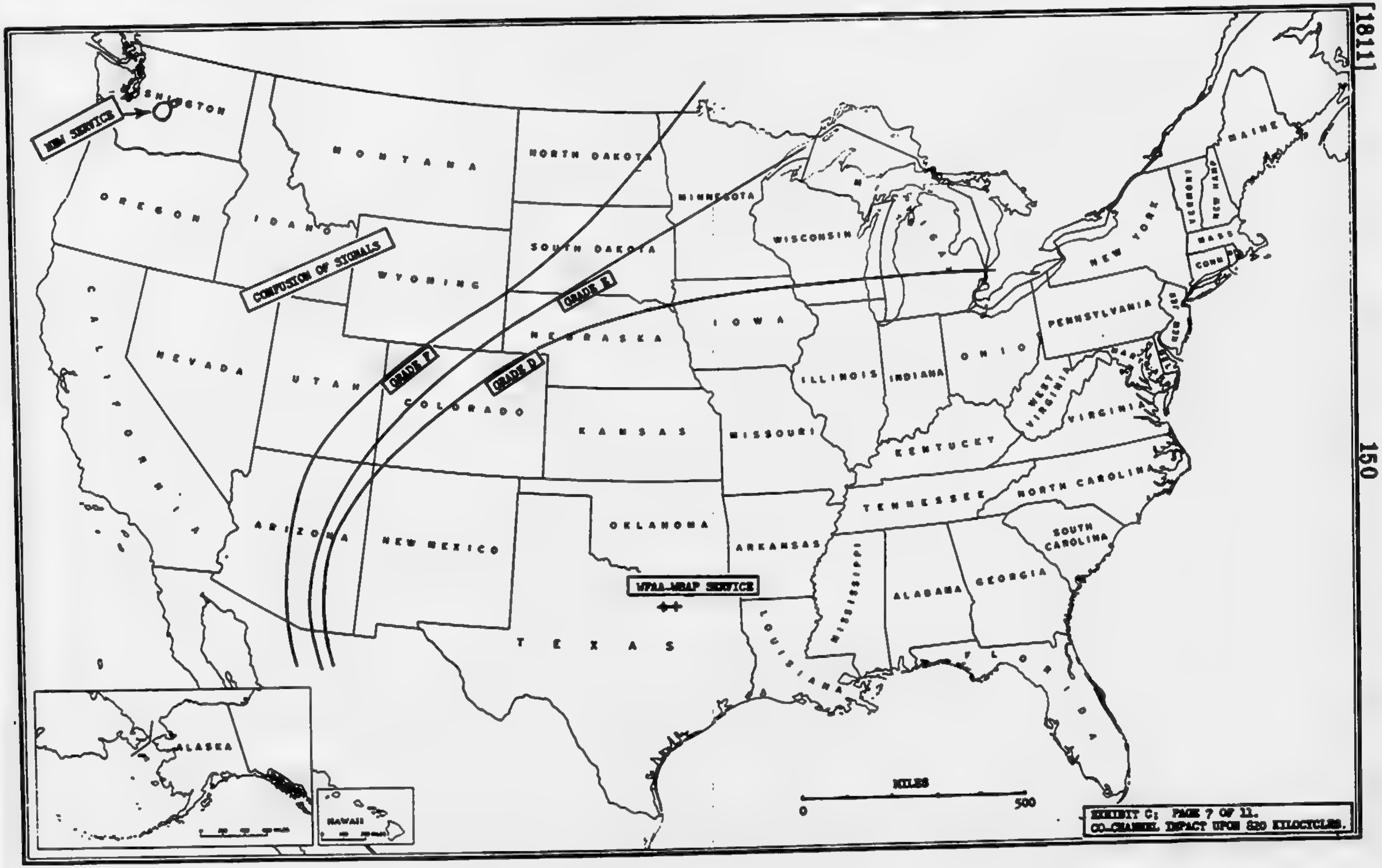
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EXHIBIT C; PAGE 7 OF 11.
CO-CHANNEL IMPACT UPON 820 KILOCYCLES.

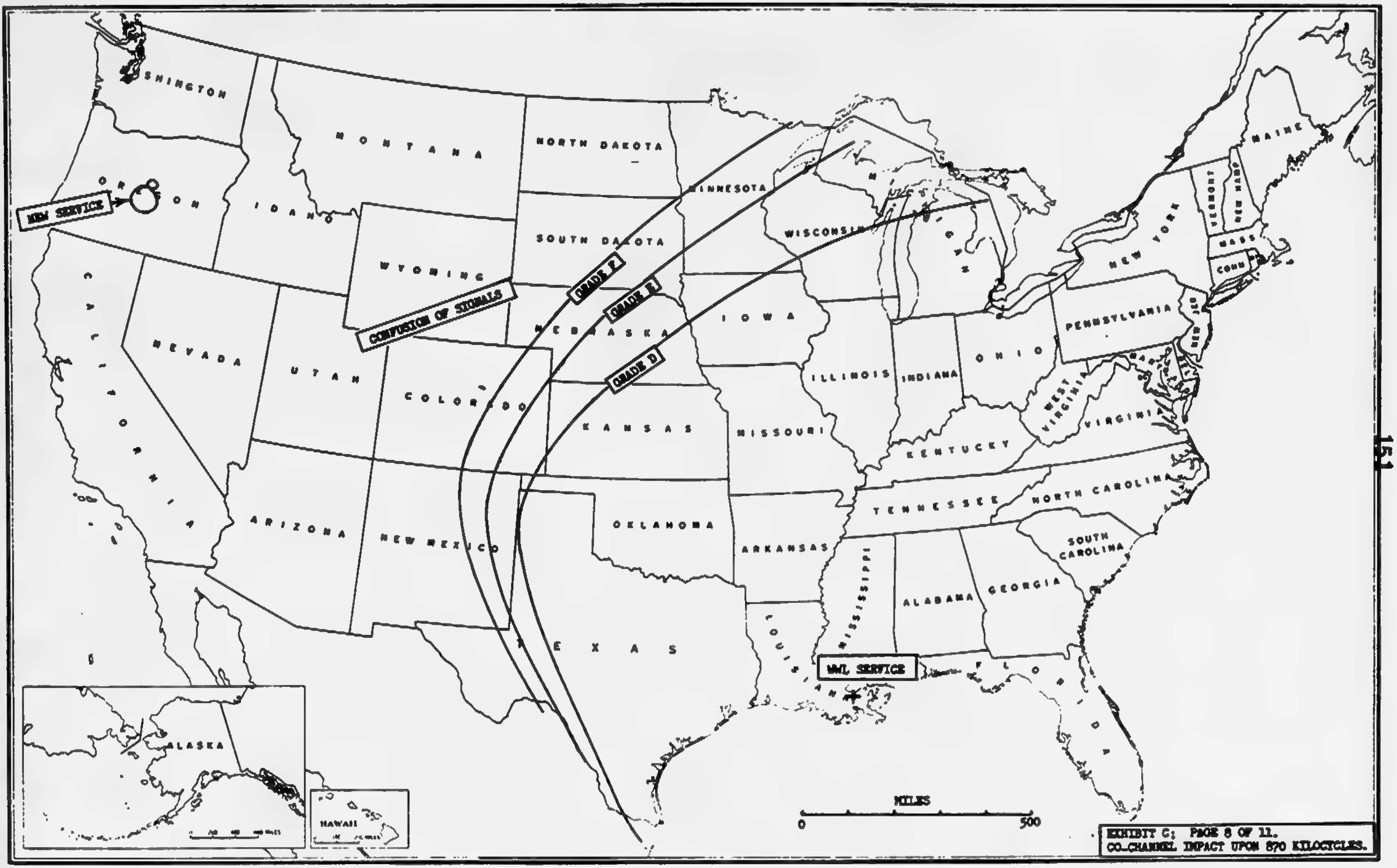
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EXHIBIT C; PAGE 8 OF 11.
CO-CHANNEL IMPACT UPON 870 KILOCYCLES.

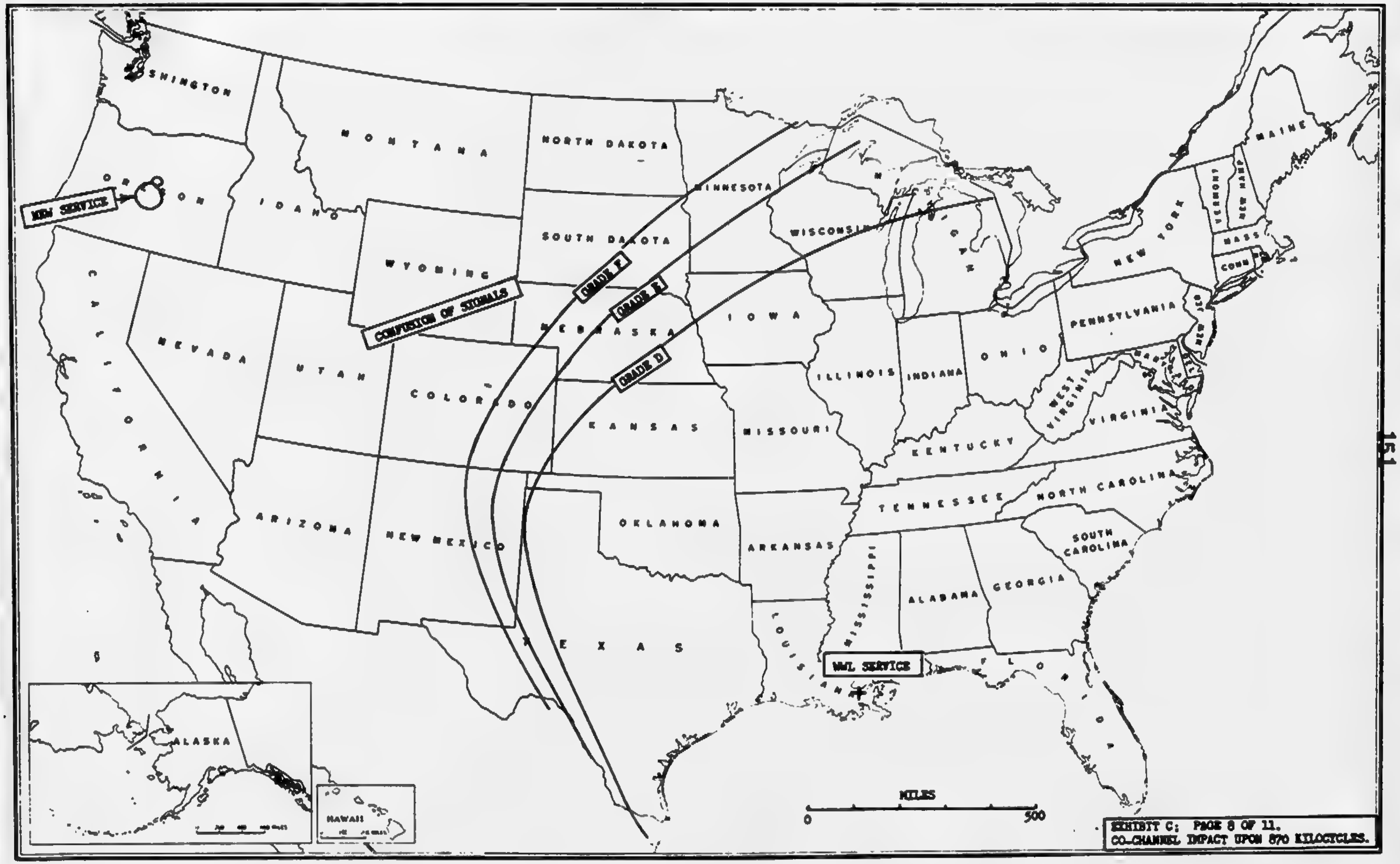
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EXHIBIT C; PAGE 8 OF 11.
CO-CHANNEL IMPACT UPON 870 KILOCYCLES.

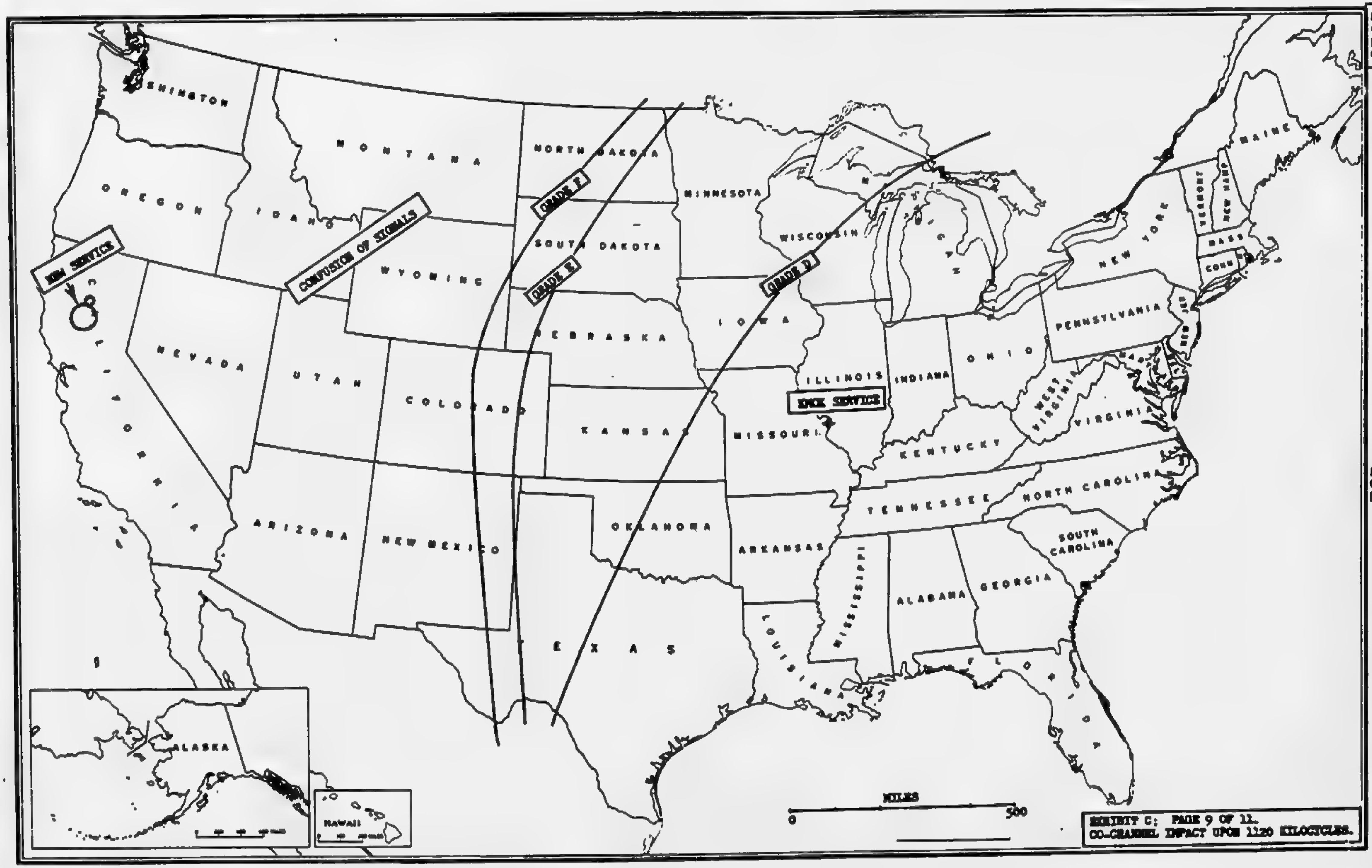
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EXHIBIT C; PAGE 9 OF 11.
CO-CHANNEL IMPACT UPON 1120 KILOCYCLES.

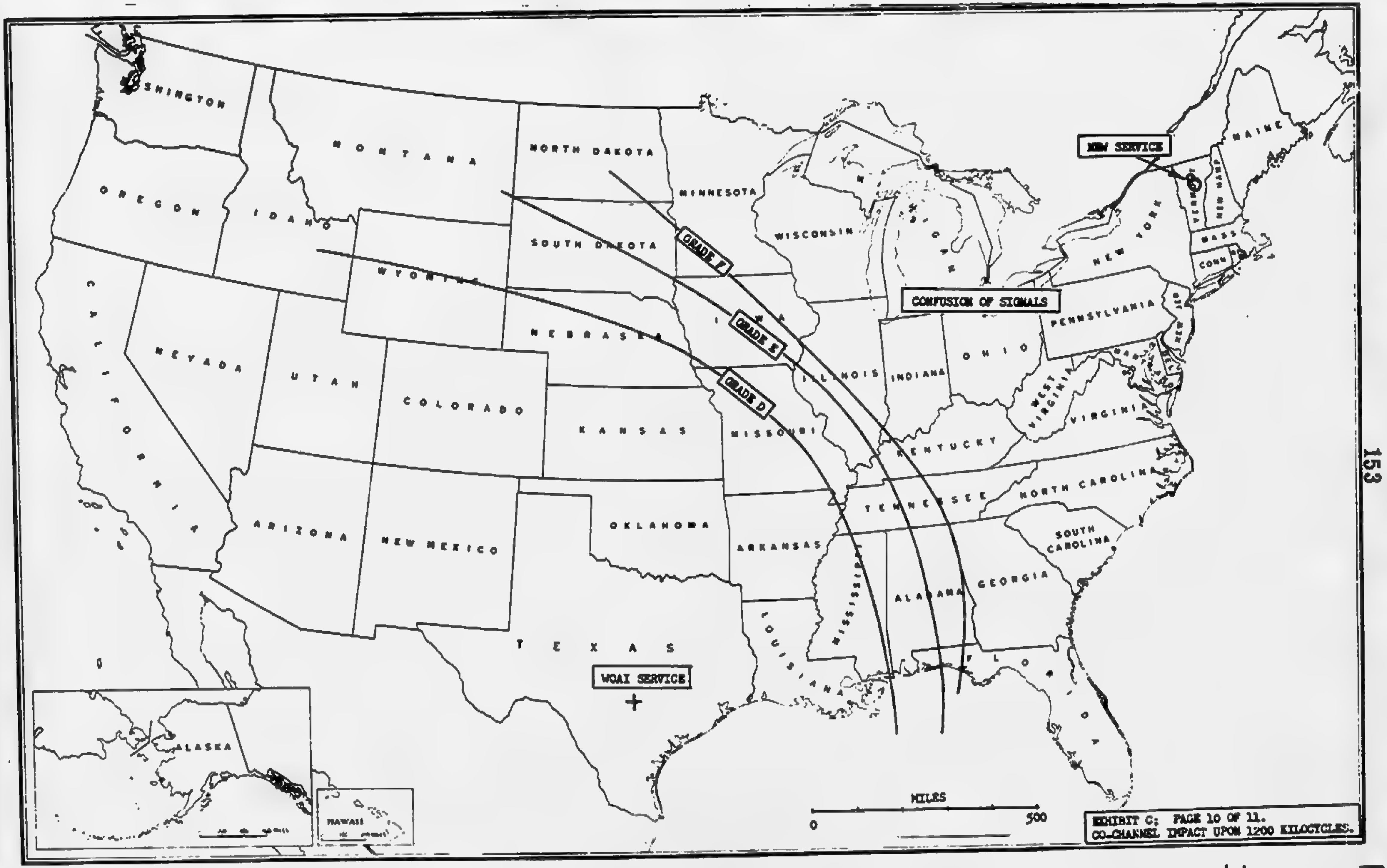
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EXHIBIT C; PAGE 10 OF 11.
CO-CHANNEL IMPACT UPON 1200 KILOCYCLES.

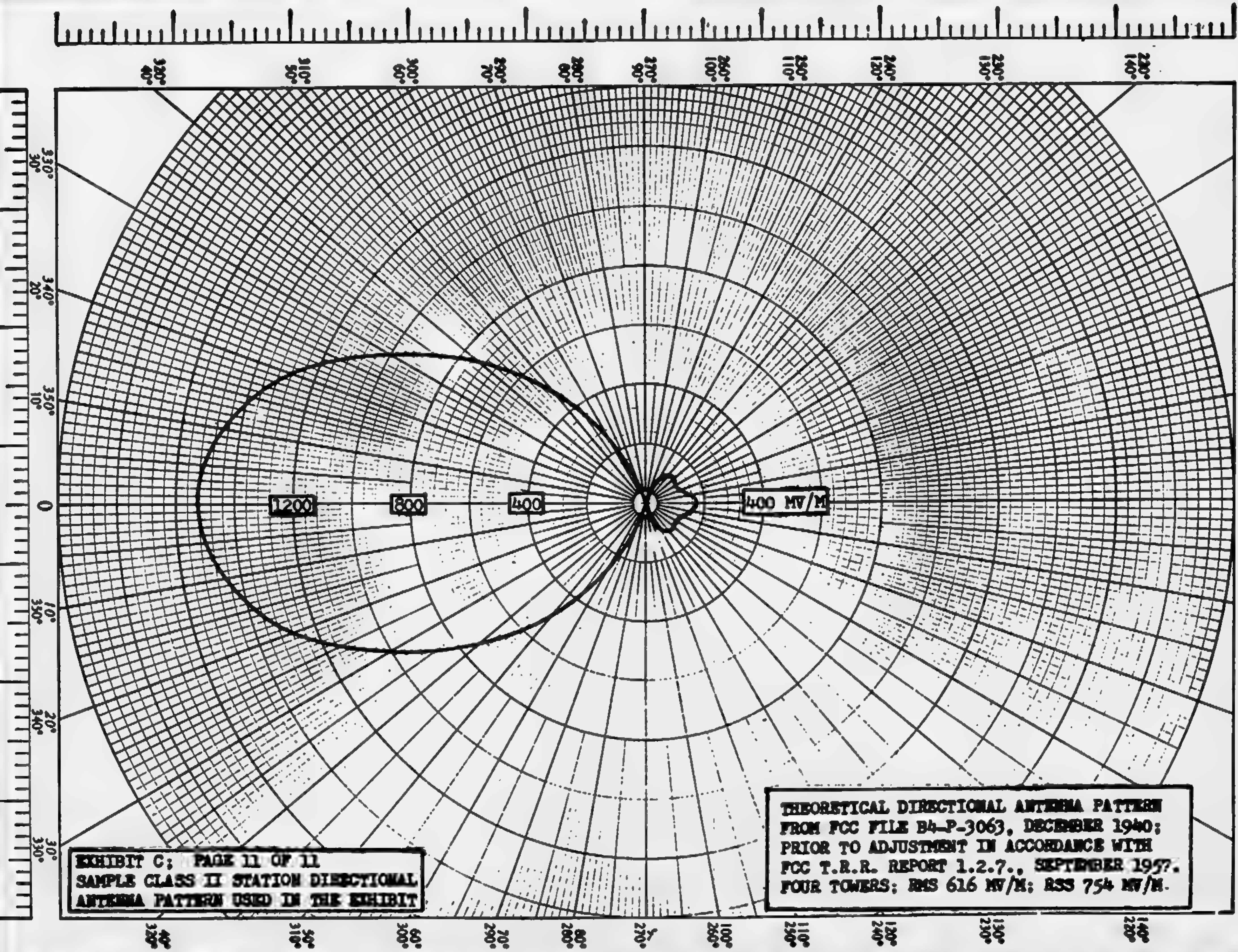

EXHIBIT C; PAGE 11 OF 11
SAMPLE CLASS II STATION DIRECTIONAL
ANTENNA PATTERN USED IN THE EXHIBIT

THEORETICAL DIRECTIONAL ANTENNA PATTERN
FROM FCC FILE B4-P-3063, DECEMBER 1940;
PRIOR TO ADJUSTMENT IN ACCORDANCE WITH
FCC T.R.R. REPORT 1.2.7., SEPTEMBER 1957.
FOUR TOWERS; RMS 616 MV/M; RSS 754 MV/M.

B
FCC 59 1132
79460

SUPPLEMENT TO THIRD NOTICE OF FURTHER PROPOSED RULE MAKING

1. Attached to the Third Notice of Further Proposed Rule Making (FCC 59-972), issued by the Commission on September 22, 1959, are ten maps and a sample directional antenna pattern collectively identified as "Exhibit C" (pages 1 through 11).

2. This exhibit is referred to in paragraph 16 of the test of the Notice as follows:

> "There are indicated in the maps attached as Exhibit C examples of the general impact upon the present capacity of the channels for skywave service resulting from 10 kilowatt directional antenna operation of new Class II stations at centralized geographic locations under Table I. These are included in the Notice for illustrative purposes only, to show the general effect of the assignments listed therein. They should not be considered to constitute a determination that the capacity of these channels should be so delimited."

3. Inquiries addressed to the Commission have indicated that, despite the aforenoted portion of the text, an undue and misleading significance is being attached to Exhibit C. The correlation therein, in map form, of a series of existing Class I stations with a series of non-existent Class II stations, each shown at a definite location, appears to have created the erroneous impression that Exhibit C comprises detailed Commission plans for ten of the clear channels. This misinterpretation has led to: (a) consideration of the overall proposal of Class II assignments on clear channels in terms of the limited data of Exhibit C only; (b) limitation of the method of formulating and presenting engineering data to the method employed in Exhibit C only, although no such limitation was intended by the Commission; (c) concern on the part of certain interested parties as to corresponding Commission plans for several channels not included in Exhibit C.

4. Exhibit C does not constitute an integral part of the proposal with which it is associated. As was indicated in the aforenoted portion of the text of the Notice, Exhibit C was attached thereto for the

[1848]

sole purpose of illustrating the general type of situation to be anticipated as a consequence of the implementation of this or a similar proposal. Exhibit C should therefore not be understood as placing any kind of limitation on data or showings which interested parties may wish to submit in response to the Third Notice.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Mary Jane Morris
Secretary

Adopted: November 4, 1959

Released: November 5, 1959

[1950]

B
FCC 60-155
83687

SECOND SUPPLEMENT TO THE THIRD NOTICE OF FURTHER PROPOSED RULE MAKING

1. The Clear Channel Broadcasting Service has filed with the Commission on November 24, 1959, a Petition for Clarification of the Commission's Third Notice of Further Proposed Rule Making in the instant proceeding, adopted September 18, 1959, released September 22, 1959.

2. CCBS therein requests clarification of the following matter: (1) in the Third Notice comments have been invited on the plan of assigning new unlimited time stations on the Class I-A channels; (2) as heretofore there has been no nighttime duplication on Class I-A channels, the Commission's Rules do not include engineering standards

of protection to be afforded Class I-A stations from nighttime co-channel operations; (3) nor are such standards explicitly stated in the Third Notice as an adjunct to the requested formulation of comments. CCBS states its own opposition to any nighttime duplication on the Class I-A clear channels, but notes that CCBS and other interested parties need a precise statement of the nighttime protection to be afforded Class I-A stations under the proposed plan in order to formulate their comments thereon. CCBS claims that this requirement is not satisfied by that portion of paragraph 13 of the Third Notice wherein it is stated that: "Each new station licensed under the amended Rule would be required to install a directional antenna, designed to control the direction of radiation of energy in order to provide a satisfactory degree of protection from harmful interference to the existing service in the United States on these channels."

3. The proposal to consider new unlimited-time assignments on clear channels as set out in the Third Notice does not incorporate a formula, routinely applicable in each case, to determine a fixed maximum limit of radiation toward the dominant Class I station on the frequency. Such a formula would necessarily define one particular new concept of Class I-A operation, whereas, it was desired at this time, instead, to explore the various possible modifications of the existing concept of the Class I-A station. Possible bases for nighttime standards of protection to Class I-A stations exist in: (1) the 0.5 mv/m 50% skywave contour which presently provides the basis for nighttime protection for Class I-B stations under the Commission's Rules; (2) Type "E" or Type "F" service as defined in Exhibit 109 of this proceeding. There are also other possibilities which merit consideration with respect to their consistency with the general objective of allowing new unlimited time operations on clear channels while preserving, insofar as possible, the Class I-A character and usable service of the existing stations.

[1951]

It is, furthermore, noted that under the terms of the proposal set out in the Third Notice, the individual merits and deficiencies of each application for unlimited time assignments on a particular channel in the designated state or states would be studied, and due consideration given to, among other factors, the nighttime interference which would result from each proposed operation to the dominant station on the channel.

4. In view of the foregoing, interested parties are at liberty to include in their comments in response to the Third Notice consideration of: (1) the general interference situation which would result from implementation of the proposed plan; (2) the approximate pattern of nighttime utilization of any particular channel under this plan; (3) proposed engineering standards for the limitatior of nighttime co-channel interference to Class I-A stations under this or any other plan involving nighttime duplication of the clear channels.

FEDERAL COMMUNICATIONS COMMISSION
/s/ Mary Jane Morris
Secretary

Adopted: February 17, 1960
Released: February 19, 1960

[2021]

[Rec'd Mar. 30, 1960 - F.C.C.]

COMMENTS

Comes now Westinghouse Broadcasting Company, Inc. (WBC), by its attorney, John W. Steen, Esq., and herewith submits its comments pursuant to the Third Notice of Further Proposed Rule Making released September 22, 1959. Westinghouse Broadcasting Company, Inc. is the licensee of Station KYW, 1100 kc, Cleveland, Ohio, Station KDKA, 1020 kc, Pittsburgh, Pennsylvania; and Station WBZ, 1030 kc, Boston, Massachusetts. These stations are the only ones operating full time on these frequencies.

I.

The Commission requests comments directed to:

"(1) the plan of assigning new unlimited time stations to the clear channels listed on Table I and reflected in Figure 1."

1. The first and most important question which the Commission must determine in connection with its study of clear channels is the part such channels will play in national defense communications in the

[2022]

event of a sudden attack by a foreign power. Certain basic facts concerning national defense may be controlling insofar as the public interest in preserving clear channels for disaster communication purposes is concerned. We suggest the Commission solicit the views of the Department of Defense and Office of Civilian Defense. More than 50% of the land area of the United States, containing about 12% of the population is dependent upon skywave service which is available only through clear channel stations. The 40,000,000 automobile radios and the 11,500,000 portable radio receivers, not requiring a central source of power, will prove to be a communication asset of unlimited value in the hands of the American public, particularly in major metropolitan areas (which are most vulnerable to attack) if skywave service from distant points remains available. Such dependence by the public is an annually recurring experience in times of hurricanes, tornadoes and floods and, of course, would assume critical proportions in the event of war. WBC stations have many times played an important role in wide area communication service during times of disasters and, to be always ready to render such service, maintain emergency standby power sources independent of the local utilities. On the basis of all presently available information, it is the conviction of WBC that the present allocation system provides a necessary and irreplaceable radio service to the United States, in as efficient a manner as

[2023]

practicable and, therefore, WBC is opposed to any action which will reduce this service.

2. The Commission's plan of allocation proposed to assign a single Class II station to each clear channel frequency in areas which will have "minimum impact on existing service", using a directional antenna in order to provide "a satisfactory degree of protection" to existing service, but with a minimum power of 10 kw in order to secure maximum coverage. The effect of the proposal is, therefore, to create 23 new Class II stations operating with a minimum of 10 kw power located in specific geographical areas. Subject to the basic position in opposition to any action which will substantially reduce clear channel service, WBC endorses the Commission's philosophy of maintaining existing skywave service provided that all additional stations are restricted to protection patterns which will avoid interference to the I-A station within its .5 mv/m 50% SW contour, thus minimizing the impact on existing I-A service. The desirability of primary over secondary service, and the desirability of creating additional outlets for the expression of local opinion, suggests the obvious public interest aspect of increasing the number of local outlets, if the existence of such additional outlets, on balance, is a practical possibility. WBC, therefore, supports the aim of the Commission's notice, subject,

[2024]

however, to the careful delineation of the limits of radiation that will be permitted in the direction of the Class I station in order to prevent any interference within the .5 mv/m 50% skywave service area of the Class I station.

3. WBC believes, however, that the most efficient use of scarce spectrum space can be made by modifying and enlarging the Commission's Table I after completion of the study proposed by WBC in its Reply Comments filed in Part II of these proceedings, under date of October 27, 1958. These Reply Comments are incorporated herein by reference and are briefly summarized as follows:

(a) The WBC study, involving 1020, 1030 and 1100 kc, shows 20 new Class II assignments possible on these three frequencies, tentatively located on the engineering maps. (A copy of the maps is attached for reference.)

(b) These 20 assignments provide the first local primary nighttime service to 11 communities and, in many cases, the first nighttime primary service of any kind.

(c) The assignments simultaneously provide a substantial measure of protection to the existing skywave service of the 3 Class I stations involved (comparable to the protection contemplated by the Commission in Table I attached to the Notice in Part III of these proceedings).

[2025]

(d) The WBC proposal does not create "white areas" in the densely populated primary service area of the three stations and does not reduce the number of available primary services within such area (comparable to the Commission's proposed plan of allocation shown in Part III).

4. The allocations WBC has proposed for the three frequencies has taken into consideration the economics and population size by adding unlimited Class II operations in areas which are presently sparsely served while, at the same time, allocating improved power and time operations in large metropolitan areas where the demand for such has been indicated through applications filed with the Commission and where the grant appears justified by the size of the particular population center involved.

5. In most of the Class II allocations proposed by the WBC engineering study (attached), the new Class II stations could operate with greater power during daytime hours and thus provide an even larger service area daytime. To this extent, additional primary service will be rendered to the population centers involved.

6. The WBC proposed allocation plan (a) protects the existing Class I stations to substantially the same extent as contemplated by

[2026]

the Commission in its proposals in Part III; and (b) indicates the possibility of 20 new Class II assignments on three frequencies, and thus is an efficient use of scarce spectrum space.

7. WBC suggests that a similar engineering study of the other clear channel frequencies be made in order to determine whether or not a comparably efficient use of the spectrum can be made by providing for many additional Class II assignments on the remaining 20 clear channels, without loss of the existing primary service areas, and with a minimum impact on the existing skywave service. Such additional assignments would provide many new services, all within the policy decisions enunciated by the Commission in its Notice in Part III of this Docket.

II.

The Commission also requests comments directed to:

> "(2) the use, by Class I-A clear channel stations of power in excess of 50 kw, under any of the proposals of record in this proceeding or any other proposals which interested parties may desire to submit. . ."

8. WBC agrees with the analysis of the many variables controlling skywave service set forth by the Commission in Paragraph 8 of its Third Notice, and is of the opinion, on balance, that the grant of powers in excess of 50 kw for clear channel stations would have to be of such magnitude (in order to appreciably increase service) as to be economically unfeasible. WBC estimates that

[2027]

750 kw power would involve a capital outlay in excess of $500,000 and increased annual operating expense of more than $250,000.* The imposition of such a financial burden on each station required to operate at super power must be rejected for two basic reasons:

(a) Additional advertising revenue sufficient to carry the additional burden of super power will not, at least in the present market, be available to such super power station; and

(b) The existence of such a powerful outlet will place all other stations operating in the same market at a competitive disadvantage audience-wise and perhaps revenue-wise.

9. Operating Class I stations at an increased power in the vicinity of 500 to 750 kw in order to improve nighttime coverage will further restrict the assignment of any additional stations on such channels at night and, to the extent that the increase in power increases the primary service of such stations, will restrict the number and location of stations that can be assigned to such channels for daytime only operations. Such an effect would not be in the public interest to the extent that it would deprive presently underserved areas of the limited primary service now available from daytime stations.

---

* - Such costs would be substantially increased in attempting to produce the 5 megawatts suggested by the Commission as necessary during the summer months to secure noise-free service equivalent to that now available under existing power during the winter months.

[2028]

10. Authorizing power in excess of 50 kw and thereby creating a heavy and perhaps largely unrecoverable financial burden on the licensee, putting other licensees at a signal, and perhaps financial, competitive disadvantage, interfering with existing daytime service, and restricting the assignment of additional stations to these channels, will frustrate the basic public demand which led to these proceedings. Therefore, it would appear more in the public interest if the number

of stations assigned on each of the clear channels could be increased rather than decreased, provided the sites, power and directional antennas were carefully selected so that: (a) the existing coverage from the Class I-A station could be preserved to the .5 mv/m 50% SW contour; (b) service could be supplemented in as many additional communities as possible by the assignment of additional fulltime services on the channel; and (c) additional daytime only stations could be authorized to enlarge primary service areas.

III.

Conclusion

11. WBC, in recognition of the fact that 50% of the land area of the United States is dependent upon skywave service, is opposed to a breakdown of the clear channels and, furthermore, believes that their continued operation under present conditions may prove to be critical to national defense in times of disaster. However, if some

[2029]

additional stations can be assigned to existing clear channels in order to provide additional primary service, WBC suggests that the Commission adopt only such changes in the present allocation system as will recognize and protect the basic skywave service being rendered by clear channel stations so that the greatest possible land mass area will continue to receive service and the additional stations will have a "minimum impact on existing service". WBC believes that its proposal herein made is an efficient compromise between the desirability of continuing unlimited skywave service, on one hand, and the creation of additional primary services, on the other.

Respectfully submitted,

WESTINGHOUSE BROADCASTING COMPANY, INC.

By /s/ John W. Steen, Counsel

March 25, 1960
40 Wall Street
New York 5, New York

[2030]

VANDIVERE AND COHEN
CONSULTING ELECTRONIC ENGINEERS
WASHINGTON, D. C.

ENGINEERING STATEMENT OF JULES COHEN AND EDGAR F. VANDIVERE, JR. ON BEHALF OF WESTINGHOUSE BROADCASTING COMPANY, INC. IN THE MATTER OF DOCKET 6741

WASHINGTON) Affidavit
DISTRICT OF COLUMBIA) ss:

Edgar F. Vandivere, Jr., and Jules Cohen, being first duly sworn, say that they are partners in the firm of Vandivere and Cohen, consulting electronic engineers, Washington, D. C.; that they are registered professional engineers and that their qualifications as experts in radio engineering are a matter of record with the Federal Communications Commission. The accompanying statement prepared on behalf of Westinghouse Broadcasting Company, Inc., consisting of eighteen pages, was prepared by them and under their direction. The statements contained therein are true to the best of their knowledge and belief.

/s/ Edgar F. Vandivere, Jr.
/s/ Jules Cohen

[Jurat - Oct. 24, 1958.]

[2031]

ENGINEERING STATEMENT OF JULES COHEN AND EDGAR F. VANDIVERE, JR. ON BEHALF OF WESTINGHOUSE BROADCASTING COMPANY, INC. IN THE MATTER OF DOCKET 6741

The firm of Vandivere and Cohen has been retained by Westinghouse Broadcasting Company, Inc., to prepare Class II assignemnt plans responsive to the Commission's request for "specific proposals concerning possible station assignments which would supply primary service to areas not now receiving such service," as requested in the "Further Notice of Proposed Rule Making, Docket 6741," mimeo No. 57216.

Channels 1020 kc, 1030 kc, and 1100 kc have been studied, and Class II assignment plans have been devised in general conformance to the objectives set forth in the "Further Notice." In more particular, the plans have been guided by the following detailed assignment principles and procedures:

1. (a) It has been sought to assign Class II stations, as nearly as possible, only to towns or areas having no nighttime primary service; or,
   (b) to towns or areas having no nighttime primary service of local origin.

[2032]

2. In order to have reasonable assurance that there also exists a practical demand for the proposed station at the proposed town. Class II stations have been proposed only in towns that already have at least one daytime station.
3. Where achievement of objective 1 (a) or 1 (b) above dictates an assignment to a small town, moderate power and relatively simple antennas are proposed.
4. After assignments have been made in accordance with 1 (a) and 1 (b) above, it is recognized that the existence of applications or of high-powered daytime stations in larger cities is evidence of needed facilities, and the assignment plan has been filled out with assignments at such points.

5. Interference from Class II stations to the Class I stations has been allocated in accordance with existing FCC Rules governing Class IB stations. However, in the instance of the Class II station at Corpus Christi, Texas, on 1030 kc, it is proposed that the radiation toward WBZ be limited to about the value determined by these rules, because of this station's proximity to the Gulf of Mexico and the locally high ground conductivity.

[2033]

6. Directional antennas for the proposed Class II stations have not been specifically designed; however, a channel study for each of the channels has been prepared which tabulates for each of the Class II stations the approximate permissible radiation at each of the critical directions and the approximate limitation to be received.

   In the instance of 1030 kc, the salt-water site of WBZ has been considered together with the ground conductivity at the receiving area and pertinent intervening points, and resulting limitations have been computed as supplemental information.

7. In the case of each proposed Class II station, adjacent channel conditions have been examined to assure that no interference in excess of that permitted by existing FCC Rules will be caused or received.

The plans resulting from these procedures are shown in the attached "Class II Unlimited Time Assignment Plan for 1020 kc", Class II Unlimited Time Assignment Plan for 1030 kc", and "Class II Unlimited Time Assignment Plan for 1100 kc".

[2034]

DOCKET 6741
PROPOSED
CLASS II, UNLIMITED TIME
ASSIGNMENT PLAN
1020 KC

Prepared for
WESTINGHOUSE BROADCASTING COMPANY, INC.

[2035]

1020 KC ASSIGNMENTS

General Data

Location	Night. Power kw	No. of Towers	Approx. RSS Limitation mv/m	Nighttime Primary Services ** Available	Nighttime Primary Services ** of Local Origin
Medford, Oregon	5	2	4	2	2
Rupert, Idaho	1	3	4	1	0
* Douglas, Wyoming	1	3	6	0	0
Liberal, Kansas	0.5	3	8	0	0
Socorro, New Mexico	1	3	6.5	0	0
Los Angeles, California	50	3	3	several	several

* KWIV to move from 1050 kc, 250 w, D

** Type B

[2036]

On the following page, the Channel study, the pertinent distances, bearings, permissible radiations and limitations are given to a good preliminary approximation. Dashes indicate that because of the distance involved or because of the need to protect an intervening station, the omitted data are not pertinent; or, in the instance of limitations, that the omitted data are not pertinent; or, in the instance of limitations, that the omitted limitation is below 50% of the RSS limitation. In the KDKA column only the closest distance to the KDKA 0.5 mv/m 50% contour and the most stringent radiation restriction are reported, together with the span of angle over which a restriction of radiation is needed.

The final page shows locations and radiation lobes in map form.

1020 KC ASSIGNMENT PLAN, CHANNEL STUDY

FROM	TO	Medford	Rupert	Douglas	Liberal	Socorro	Los Angeles	KDKA
Medford, Oregon	D		470 mi	---	---	1040 mi	620 mi	1400 mi
	Ø		85°	---	---	119°	154°	65°-101°
	PF		70 mv/m	---	---	500 mv/m	75 mv/m	200 mv/m
	Lim		---	---	---	---	---	---
Rupert, Idaho	D	480 mi		410 mi	770 mi	690 mi	630 mi	920 mi
	Ø	271°		86.5°	116°	147°	204°	63°-113°
	PF	73 mv/m		90 mv/m	320 mv/m	150 mv/m	70 mv/m	62 mv/m
	Lim	---		---	---	---	---	---
Douglas, Wyoming	D	---	410 mi		460 mi	600 mi	900 mi	500 mi
	Ø	---	271°		148°	188°	232°	54°-127°
	PF	---	58 mv/m		130 mv/m	160 mv/m	160 mv/m	19 mv/m
	Lim	---	---		---	---	---	---
Liberal, Kansas	D	1230 mi	770 mi	460 mi		390 mi	980 mi	340 mi
	Ø	294°	303°	330°		240°	263°	27°-117°
	PF	540 mv/m	160 mv/m	100 mv/m		70 mv/m	200 mv/m	12 mv/m
	Lim	---	---	---		5 mv/m	---	---
Socorro, New Mexico	D	1040 mi	690 mi	600 mi	390 mi		630 mi	730 mi
	Ø	308°	330°	7°	57°		273°	33°-96°
	PF	350 mv/m	130 mv/m	150 mv/m	110 mv/m		76 mv/m	35 mv/m
	Lim	---	---	---	---		---	---
Los Angeles, California	D	620 mi	630 mi	900 mi	980 mi	630 mi		1320 mi
	Ø	337°	21°	45°	72°	86°		46°-90°
	PF	210 mv/m	160 mv/m	350 mv/m	440 mv/m	160 mv/m		170 mv/m
	Lim	4 mv/m	3 mv/m	---	---	3 mv/m		---
Lim from KDKA		1.9 mv/m	3 mv/m	5.7 mv/m	8.4 mv/m	3.9 mv/m	1.8 mv/m	

D = distance; Ø = true bearing; PF = permissible radiation; Lim = limitation

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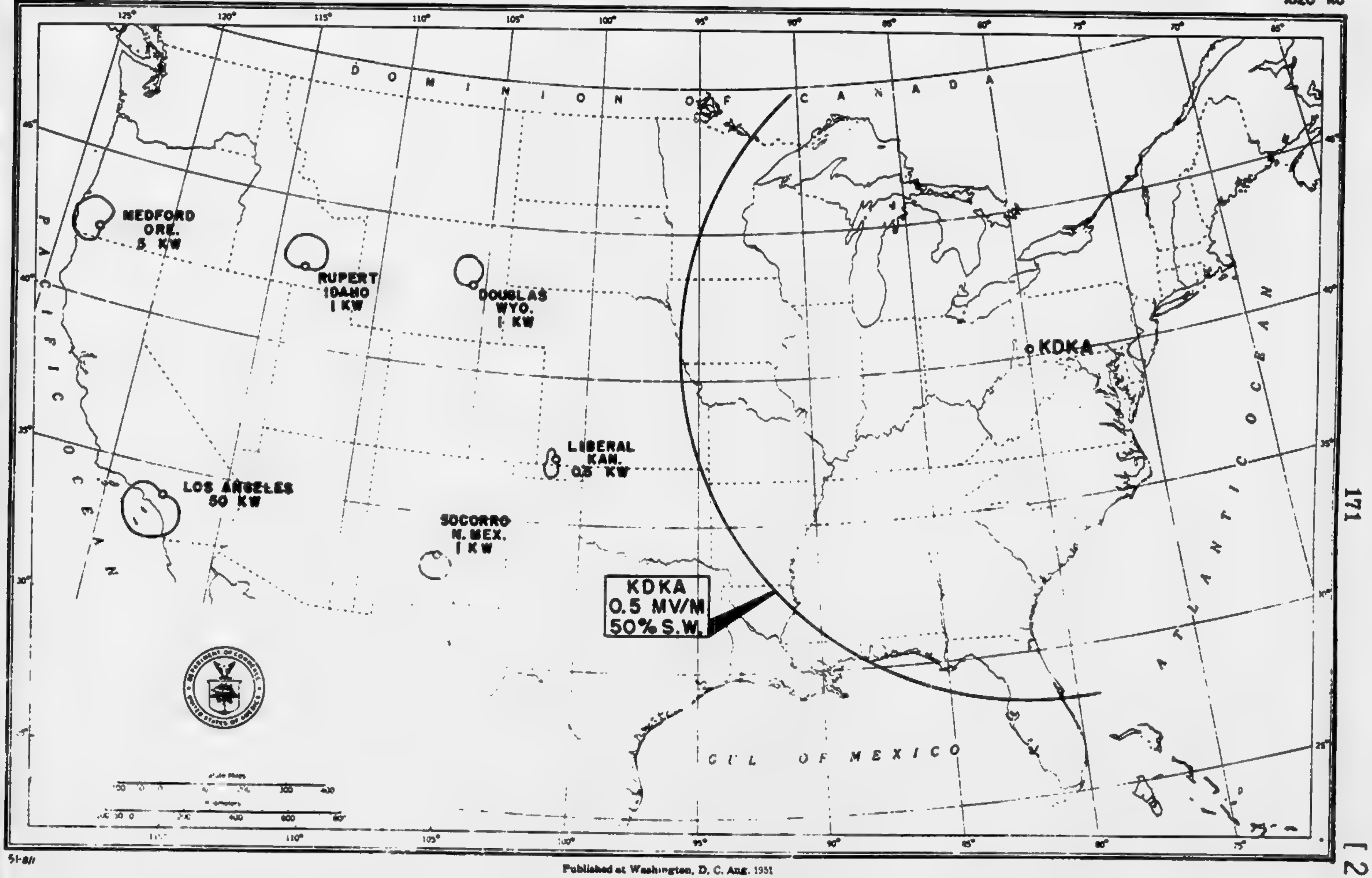
OUTLINE MAP
UNITED TATES

PAGE 4
1020 KC



D O M I N I O N O F C A N A D A
P A C I F I C O C E A N
A T L A N T I C O C E A N
G U L F O F M E X I C O
MEDFORD ORE. 5 KW
RUPERT IDAHO 1 KW
DOUGLAS WYO. 1 KW
LIBERAL KAN. 0.5 KW
LOS ANGELES 50 KW
SOCORRO N. MEX. 1 KW
KDKA
KDKA 0.5 MV/M 50% S.W.
125° 120° 115° 110° 105° 100° 95° 90° 85° 80° 75° 70° 65°
45° 40° 35° 30° 25°

Published at Washington, D. C. Aug. 1931
BY THE U. S. COAST AND GEODETIC SURVEY
H. Arnold Karo, Director

U.S.C.&G.S. 3084

1020 KC
WESTINGHOUSE
TENTATIVE ALLOCATION

VANDIVERE AND COHEN

[2039]

DOCKET 6741
PROPOSED
CLASS II, UNLIMITED TIME
ASSIGNMENT PLAN
1030 KC

Prepared for
WESTINGHOUSE BROADCASTING COMPANY, INC.

[2040]

1030 KC ASSIGNMENTS

General Data

Location	Night. Power kw	No. of Towers	Approx. RSS Limitation mv/m	Nighttime Primary Services* Available	Nighttime Primary Services* of Local Origin
Malvern, Arkansas	1	3	8	0	0
Lodi, California	10	2	4	at least 2	0
Brainerd, Minnesota	1	3	10	1	0
Brigham City, Utah	1	3	4.5	at least 2	0
Miles City, Montana	5	3	5	1	1
Pullman, Washington	5	3	4	at least 2	1**
Corpus Christi Texas	10	4	4	at least 5	at least 5
Arcadia, Florida	0.5	3	8.5	0	0

* Type B

** Share time, noncommercial

[2041]

On the following page the pertinent distances, bearings, permissible radiations and the limitations are given to a good preliminary approximation. Dashes indicate that because of the distance involved or because of the need to protect an intervening station, the omitted data are not pertinent; or, in the instance of limitations, that the omitted limitation is below 50% of the RSS limitation. In the WBZ column, only the closest distance to the WBZ 0.5 mv/m, 50% contour and the most stringent radiation restriction are reported together with the span of angle over which a restriction of radiation is needed.

For the purpose of additional information, in instances where it was thought possible that the salt-water site of WBZ (in combination with local and intervening ground conductivities) might produce an unusually high limitation, these limitations have been computed and are reported in parentheses.

The final page shows locations and radiation lobes in map form.

1030 KC ASSIGNMENT PLAN, CHANNEL STUDY

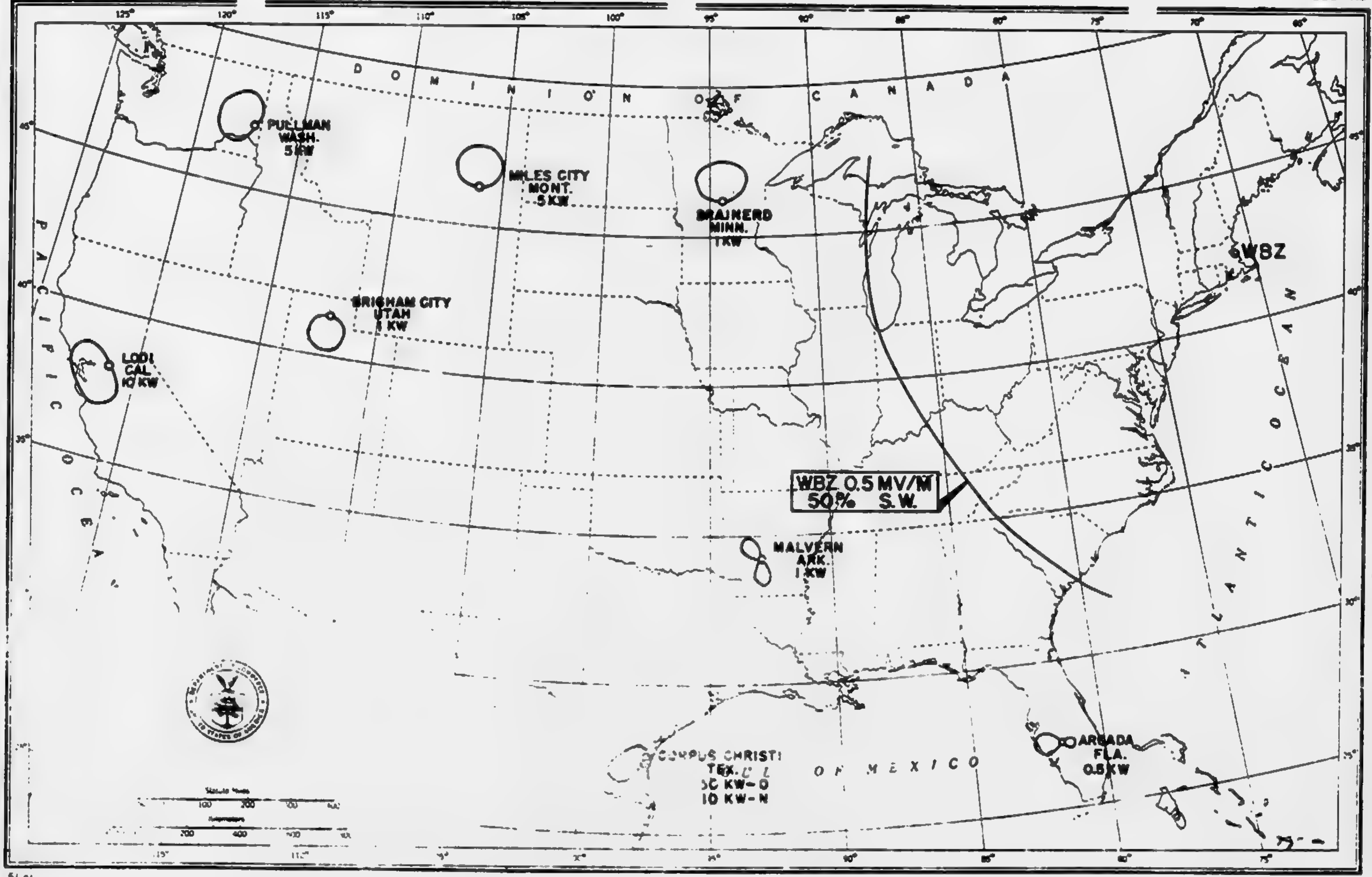
FROM		TO Malvern	Lodi	Brainerd	Brigham City	Miles City	Pullman	Corpus Christi	Arcadia	XEQR	CMJR	WBZ
Malvern, Arkansas	D		---	810 mi	1130 mi	1070 mi	---	530 mi	820 mi	1080 mi	1280 mi	450 mi
	Ø		---	356°	298°	325°	---	212°	123°	203°	129°	18°-95°
	PF		---	400mv/m	430mv/m	400mv/m	---	120mv/m	390mv/m	380mv/m	620mv/m	17mv/m
	Lim		---	---	2mv/m	---	---	3mv/m	---	2mv/m	---	---
Lodi, California	D	1610 mi		---	540 mi	990 mi	630 mi	1560 mi	---	2000 mi	---	1820 mi
	Ø	91°		---	63°	50°	19°	110°	---	129°	---	62°-87°
	PF	---		---	90mv/m	360mv/m	110mv/m	1030mv/m	---	1000mv/m	---	384mv/m
	Lim	---		---	---	---	---	---	---	---	---	---
Brainerd, Minnesota	D	810 mi	---		1000 mi	590 mi	---	1280 mi	1490 mi	---	---	310 mi
	Ø	177°	---		254°	275°	---	189°	149°	---	---	80°-143°
	PF	360mv/m	---		300mv/m	140mv/m	---	620mv/m	---	---	---	11mv/m
	Lim	---	---		---	3mv/m	---	---	---	---	---	---
Brigham City, Utah	D	1130 mi	570 mi	970 mi		500 mi	490 mi	1220 mi	---	1630 mi	---	1270 mi
	Ø	107°	254°	61°		36°	329°	132°	---	148°	---	64°-97°
	PF	880mv/m	84mv/m	700mv/m		130mv/m	150mv/m	540mv/m	---	500mv/m	---	155mv/m
	Lim	---	---	---		---	4mv/m	---	---	---	---	---
Miles City, Montana	D	1070 mi	990 mi	560 mi	460 mi		550 mi	1370 mi	---	---	---	900 mi
	Ø	136°	239°	87°	224°		275°	157°	---	---	---	81°-117°
	PF	750mv/m	300mv/m	230mv/m	74mv/m		88mv/m	750mv/m	---	---	---	58mv/m
	Lim	---	---	---	---		---	---	---	---	---	---
Pullman, Washington	D	---	620 mi	---	440 mi	540 mi		---	---	---	---	1420 mi
	Ø	---	202°	---	144°	89°		---	---	---	---	80°-105°
	PF	---	100mv/m	---	70mv/m	100mv/m		---	---	---	---	210mv/m
	Lim	---	---	---	---	---		---	---	---	---	---
Corpus Christi, Texas	D	530 mi	1570 mi	1290 mi	1220 mi	1370 mi	---		970 mi	560 mi	1330 mi	960 mi
	Ø	30°	304°	8°	321°	342°	---		87°	191°	103°	21°-67°
	PF	160mv/m	2000mv/m	1500mv/m	1100mv/m	900mv/m	---		450mv/m	65mv/m	590mv/m	35mv/m
	Lim	---	4mv/m	---	4mv/m	---	---		---	1.5mv/m	---	---
Arcadia, Florida	D	820 mi	---	1400 mi	1980 mi	1860 mi	---	870 mi		1230 mi	480 mi	380 mi
	Ø	310°	---	338°	309°	322°	---	277°		247°	147°	344°-32°
	PF	37mv/m	---	---	---	---	---	210mv/m		370mv/m	77mv/m	12.5mv/m
	Lim	---	---	---	---	---	---	---		---	---	---
Lim from WBZ Alternate Comp.:		7.2mv/m (6.8mv/m)	1.3mv/m	9.1mv/m (9.5mv/m)	2.2mv/m	3.4mv/m	1.8mv/m	3.3mv/m (8.4mv/m)	8.5mv/m	1.2mv/m	4mv/m	

D = distance; Ø = true bearing; PF = permissible radiation; Lim = limitation

No. 3084 PRICE 5 CENTS

OUTLINE MAP
UNITED STATES

PAGE 4
1030 KC


DOMINION OF CANADA
PULLMAN WASH. 5 KW
MILES CITY MONT. 5 KW
BRAINERD MINN. 1 KW
WBZ
BRIGHAM CITY UTAH 1 KW
LODI CAL. 10 KW
PACIFIC OCEAN
ATLANTIC OCEAN
WBZ 0.5 MV/M 50% S.W.
MALVERN ARK. 1 KW
ARCADIA FLA. 0.5 KW
CORPUS CHRISTI TEX. 50 KW-D 10 KW-N
GULF OF MEXICO
125°
120°
115°
110°
105°
100°
95°
90°
85°
80°
75°
70°
65°
45°
40°
35°
30°
25°
Statute Miles
100
200
300
400
Kilometers
200
400
600
800

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H. Arnold Karo, Director

U.S.C.&G.S. 3084

175

1030 KC
WESTINGHOUSE
TENTATIVE ALLOCATION

VANDIVERE AND

[2043]

[2044]

DOCKET 6741
PROPOSED
CLASS II, UNLIMITED TIME
ASSIGNMENT PLAN
1100 KC

Prepared for
WESTINGHOUSE BROADCASTING COMPANY, INC.

[2045]

1100 KC ASSIGNMENTS

General Data

Location	Night. Power kw	No. of Towers	Approx. RSS Limitation mv/m	Nighttime Primary Services* Available	Nighttime Primary Services* of Local Origin
Kingsville, Texas	1	3	7	0	0
Golden, Colorado	1	3	6	at least 4	0
Mandan, North Dakota	0.5	3	9	2	1
Las Vegas, Nevada	5	3	4	at least 4	at least 4
Ephrata, Washington	5	2	4	0	0
San Francisco, California	50	3	4	at least 4	at least 4

* Type B

[2046]

On the following page, the Channel study, the pertinent distances, bearings, permissible radiations and limitations are given to a good preliminary approximation. Dashes indicate that because of the distance involved or because of the need to protect an intervening station, the omitted data are not pertinent; or, in the instance of limitations, that the omitted limitation is below 50% of the RSS limitation. In the KYW column only the closest distance to the KYW 0.5 mv/m 50% contour and the most stringent radiation restriction are reported, together with the span of angle over which a restriction of radiation is needed.

The final page shows locations and radiation lobes in map form.

1100 KC ASSIGNMENT PLAN, CHANNEL STUDY

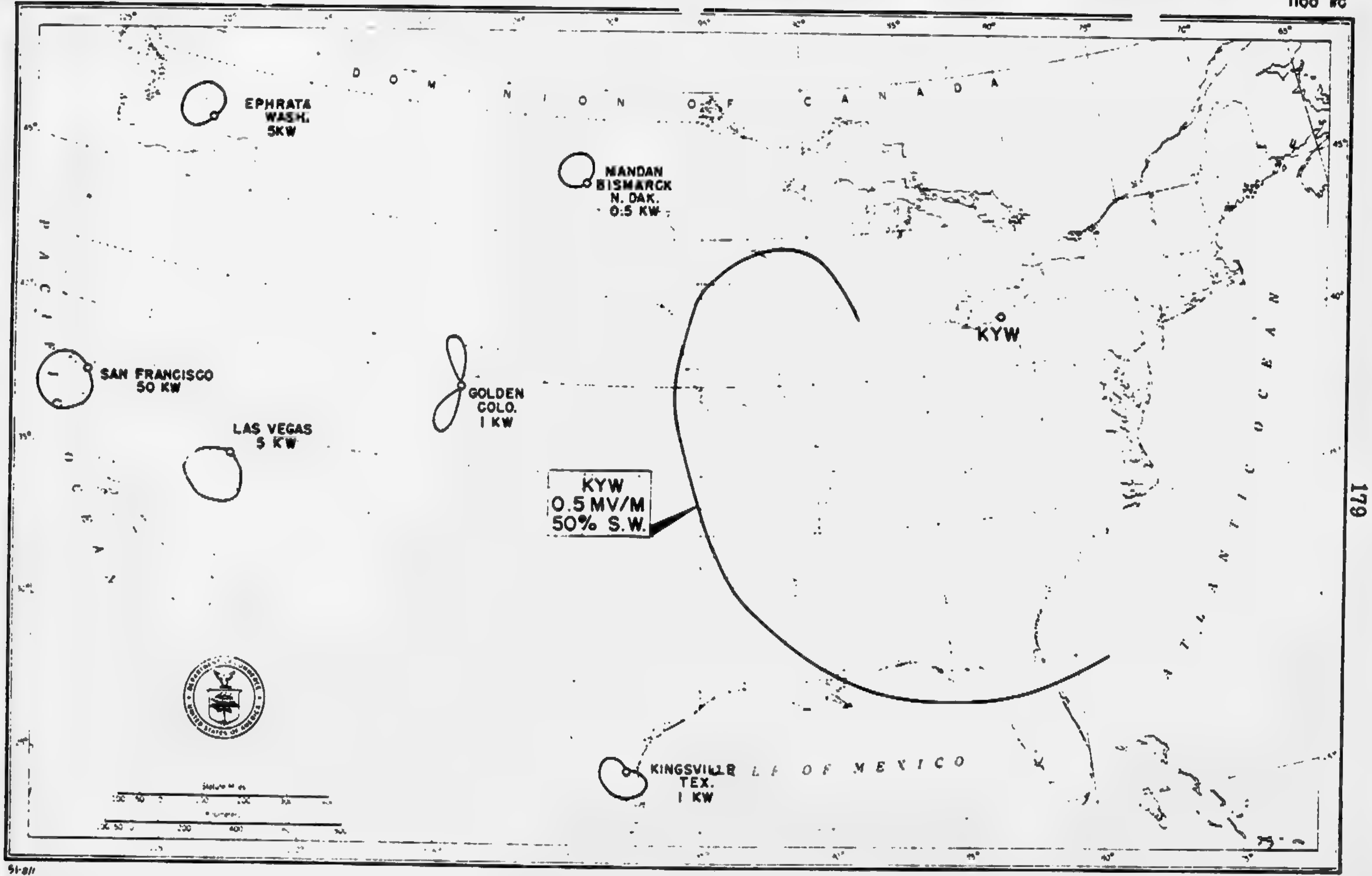
FROM	TO	Kingsville	Golden	Mandan	Las Vegas	Ephrata	San Francisco	KYW
Kingsville, Texas	D		950 mi	1350 mi	1180 mi	1810 mi	1580 mi	420 mi
	Ø		336°	354°	305°	325°	303°	6°-80°
	PF		400 mv/m	---	500 mv/m	---	1100 mv/m	17 mv/m
	Lim		---	---	---	---	---	---
Golden, Colorado	D	950 mi		530 mi	600 mi	890 mi	930 mi	480 mi
	Ø	151°		22°	249°	310°	266°	59°-125°
	PF	400 mv/m		160 mv/m	100 mv/m	330 mv/m	270 mv/m	17 mv/m
	Lim	---		---	---	3 mv/m	---	---
Mandan, North Dakota	D	1350 mi	530 mi		1040 mi	890 mi	1260 mi	400 mi
	Ø	172°	205°		229°	279°	246°	103°-160°
	PF	---	120 mv/m		350 mv/m	220 mv/m	600 mv/m	12 mv/m
	Lim	---	---		---	---	---	---
Las Vegas, Nevada	D	1180 mi	600 mi	1040 mi		800 mi	400 mi	1050 mi
	Ø	115°	63°	41°		345°	286°	57°-98°
	PF	---	---	---		---	120 mv/m	87 mv/m
	Lim	---	---	---		---	4 mv/m	---
Ephrata, Washington	D	1810 mi	890 mi	890 mi	800 mi		690 mi	1250 mi
	Ø	132°	121°	87°	162°		191°	88°-119°
	PF	---	330 mv/m	420 mv/m	180 mv/m		130 mv/m	140 mv/m
	Lim	---	---	---	---		---	---
San Francisco, California	D	1580 mi	930 mi	1260 mi	400 mi	1250 mi		1410 mi
	Ø	109°	76°	54°	102°	11°		64°-96°
	PF	---	---	---	122 mv/m	180 mv/m		208 mv/m
	Lim	---	---	---	4 mv/m	---		---
KYW Approx.	Lim	7 mv/m	6 mv/m	9 mv/m	2.3 mv/m	1.7 mv/m	1.5 mv/m	

D = distance; Ø = true bearing; PF = permissible radiation; Lim = limitation

No. 3084 PRICE 5 CENTS

OUTLINE MAP
UNITED STATES

PAGE 4
1100 KC


DOMINION OF CANADA
EPHRATA WASH. 5KW
MANDAN BISMARCK N. DAK. 0.5 KW
KYW
SAN FRANCISCO 50 KW
GOLDEN COLO. 1 KW
LAS VEGAS 5 KW
KYW 0.5 MV/M 50% S.W.
PACIFIC OCEAN
ATLANTIC OCEAN
KINGSVILLE TEX. 1 KW
GULF OF MEXICO

179

51-811

1100 KC
WESTINGHOUSE
TENTATIVE ALLOCATION

Published at Washington, D. C. Aug. 1951
BY THE U. S. COAST AND GEODETIC SURVEY
H. Arnold Karo Director

U.S.C.&G.S. 3084

VANDIVERE AND COHN

[2048]

[2819]

[Received Apr. 1, 1960 - FCC]

COMMENTS OF WCCO ON THIRD NOTICE

Midwest Radio-Television, Inc., (WCCO) Minneapolis, Minnesota, by its attorneys, submits the following comments on the Third Notice in these proceedings:

I. The Problem

1. The Third Notice, as in earlier stages of this proceeding, is concerned with the best way to exploit a large segment of the Nation's natural resources in the radio spectrum - the clear channels - in order to improve standard broadcast service to areas now deficient in such service. This problem is of major proportions; at night, more than half of the country's area and more than 25 million people still do not have any groundwave service. These areas and people, therefore, rely upon the skywave service of clear channel stations; but, large portions of the country - much of it in areas where there is no groundwave service - even have no, or an entirely insufficient amount of, decent (Grade E) skywave service (See Engineering Statement of A. Earl Cullum, attached, (hereinafter referred to as "Cullum Statement"), Figs. 9, 10; Third Notice (hereinafter referred to as "Notice (Part III)") Pars. 2, 3, 10).

[2820]

2. The only possibility of increasing and improving broadcast service to these areas lies in better exploitation of the present 23 Class I-A channels, the very channels which have, from the outset of radio, been expressly designed to render ground and skywave service over extensive areas (Notice of April 15, 1958 (Part II) - hereinafter referred to as "Notice (Part II)" - Pars. 13, 15, 38, 39, 41, 42; Notice (Part III), Pars. 2, 12).

II. Possible Approaches to Problems

3. The alternative approaches to making a better use of the only

available resource are (1) expanding groundwave service, primarily through the addition of a new station or stations to each of the 23 I-A channels; or (2) expanding skywave service through the authorization of greater power for the I-A station on each clear channel; or (3) a selective use of these alternatives according to the circumstances relating to each clear channel.

4. The Notice (Part II) basically, though tentatively, adopted the third approach. The Notice (Part III) adopts the first approach.

5. The Notice (Part II) adopted the selective approach and concluded:

(a) The possibility of expanding groundwave service to new areas at night, whether from new or expanded clear channel stations, is severely limited (Pars. 38, 39, 41, 46; See Notice (Part III), Par. 12).

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(b) Improvement in service - increase in quality as well as expansion to needful areas - must come primarily from new or improved skywave service by Class I stations (Par. 42).

(c) Accordingly:

(i) On 12 of the I-A channels, including 830 kc, which were carefully selected, operation by the existing I-A stations with increased (750 kw) power would improve and expand daytime and nighttime (both groundwave and skywave) service in areas where service is now deficient (Pars. 52-54):

(ii) On the other 12 channels, where the use of such increased power would not achieve such gains, 5 could best be used by assigning to each channel two Class I stations, with each station protecting the other by appropriate directional antennas and both having skywave as well as groundwave service; and the remaining 7 could best be used by assigning to each a Class II fulltime station (with groundwave service). The new stations on all 12 channels would be assigned in the western part of the country where most of the "white areas" are located (Pars. 55-60).

6. The Notice (Part III) abandons the above approach, and instead proposes the assignment of a new 10 to 50 kw Class II station (with groundwave service only) on every one of the 23 I-A channels (including 1030 and excluding 660 and 770) in designated western states at approximately 1250 miles or more from the

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existing I-A station. The grounds assigned for this change in approach are:

(a) The directionalization proposed for the existing I-A station on 5 of the channels would eliminate or reduce existing groundwave service and "dislocate" existing skywave service (Par. 7).

(b) Higher power for I-A stations, though it will improve skywave service on I-A channels, is not the only factor bearing upon the extent, location and time of such improvement (Pars. 8, 9).

(c) More than half the land area and over 25 million people still represent "white areas" and have to rely on skywave service (from clear channel stations) at night; the substantial increase in fulltime stations in recent years has made no "significant" contribution to reducing such "white areas"; and the inability to reduce "white areas" is "essentially basic" because of the nature of radio propagation (Pars. 10, 12).

(d) Accordingly, duplicate fulltime assignments on I-A channels must be limited to specified areas which need service and which will cause minimum interference to existing I-A service (Par. 12).

III. Case Study of Part III Approach to 830 kc.

7. California is the State suggested for a new fulltime Class II station assignment to provide groundwave service on 830 kc (Notice (Part III), Table I). The Commission has invited comments on this proposal, and on the use of greater power by I-A

[2823]

stations, and has specifically requested "specific data" to show "need for" and "extent" of the new service suggested, and the resulting interference limitations on existing service.

8. WCCO, Minneapolis, Minnesota, the I-A station on 830 kc, has had a study made to compare the gains (and losses) in service from (a) a Class II use of the channel in California, as suggested in Part III, and (b) the use of increased power (750 kw) by WCCO, as suggested in Part II. The details are embodied in the attached Cullum Statement. Because California is the State furthest from Minneapolis, it represents the optimum area for duplicating 830 kc. And, WCCO made extensive studies to pick the optimum location in California for the suggested use of the new Class II stations. Alternative locations within the State were studied in relation to potential groundwave service to "white areas" (Cullum Statement, Fig. 9) and potential overall groundwave service. And, the operation which would produce the greatest gains was selected - one in the vicinity of Atascadero, along the Pacific Coast, roughly midway between Los Angeles and San Francisco. The details of this study are given in the Cullum Statement, bottom Page 1, and Appendix I. The location selected is as far from Minneapolis as it is possible to get. It is very close to the center of the "white area" enclave which surrounds it. And, the antenna designed for the Class II operation at Atascadero comes close to providing a Class A or B groundwave service to almost the entire enclave (Cullum Statement, Fig. 7).

[2824]

Hence, the duplicate nighttime use of 830 kc illustrated in the present case study cannot be materially improved, if it can be improved at all.

The suggested WCCO 750 kw operation was designed so as to maintain present radiation toward Cuban and Mexican stations on 830 kc, as well as toward Canada, to double approximately the radiation eastward, and to concentrate the greatest amount of energy toward the

West (Cullum Statement, p. 1), as proposed earlier by the Commission (Notice (Part II), Par. 54).

9. The WCCO study shows (a) the overwhelmingly greater gains in service which operation of WCCO with increased power will achieve, and (b) the almost insignificant gross gains - and the overall net loss - which the suggested fulltime Class II operation in California will produce. Specifically:

(a) The maximum aggregate "white area" population to which a California station will bring Grades A and B groundwave service at night is 29,689 in an area of 895 square miles (Cullum Statement, p. 4).

(b) The maximum aggregate population which will gain an interference-free groundwave service is approximately 70,000 (Cullum Statement, p. 4).

(c) The suggested California operation(s) on 830 kc have been provided with a type of directional antenna which will generally (though not necessarily specifically) avoid interference to WCCO's present F contour (See Cullum Statement, Fig. 4),

[2825]

but, it is an over-simplification, and indeed inaccurate, to conclude that WCCO's skywave service will not receive interference from the new, fulltime Class II operation. It is recognized that clear channel skywave service is a variable thing. Not only does it change in quality with latitude, longitude, time of the year, etc., but the amount of it at any given time and place varies with the standard of service selected. That interference to skywave service will be caused even by the 23 Class II operations suggested by the Commission is reflected in the request (Notice (Part III), Par. 19) for a showing of interference "upon existing service through the confusions of the received signals" (Notice (Part II), Pars. 35, 40). To illustrate the injury which WCCO's skywave service will suffer, a study has been prepared to show the objectionable interference, under the long-established present standards, which the suggested Class II operation in Atascadero, California, will cause within WCCO's 100 uv/m and 500 uv/m (both 50%-of-the-time) contours. This study shows that the suggested California Class II operation — even though protecting WCCO's F contour — will cause WCCO to lose 86,742 square miles, or 10%, of its 500 uv/m - 50% skywave service area, and over 1,000,000 square miles, or 40%, of its 100 uv/m - 50% skywave service (Supplemental Cullum Statement, attached, p. 2, Fig. 14). There is substantial actual listening to WCCO in the above areas which would be blanketed by objectionable interference from the Atascadero operation. A few years ago WCCO made

[2826]

a count for the month of February of all unsolicited mail it received. During that single month, it received such mail from over 100 separate towns in 18 different states (ranging from Washington to Florida) lying in whole or in part within the interference area (Cullum Supplemental Statement, Fig. 14). Moreover, the loss of this WCCO skywave service is all the more serious because the interference area is overwhelmingly "white area," and much of it with an adequate amount of good skywave service (Figs. 9, 10, 14). The loss of skywave service to WCCO's present operation from the suggested California Class II assignment is so great in comparison with the amount of "white area" population which that assignment will serve, indeed, that the additional assignment on 830 kc suggested by the Notice (Part III) represents a far less efficient use of the channel than does the operation of WCCO free of the interference from such an assignment, even though it is only with 50 kw as at present.

(d) By increasing power to 750 kw and operating with a directional antenna, WCCO will provide a new E service to over 18,000,000 people in an area of over 1,500,000 square miles, and increase the population receiving an F service by over 4,000,000, representing a gain in skywave (E and F) service, overall, to over 22,000,000

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people in an area of almost 1 and 1/2 million square miles (Cullum Statement, p. 4; Figs. 3, 5).

(e) This new WCCO skywave service will achieve some remarkable gains:

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(i) In the first place, it will provide the first E service to sizeable portions of Iowa, South Dakota, Wisconsin, Nebraska, Illinois, Wyoming, Montana, Colorado, Utah, and Idaho; it will provide the second E service to even larger areas of Wisconsin, Indiana, Kentucky, Ohio, North and South Dakota, Nebraska, Kansas, Colorado, Wyoming, Montana, Utah, and Idaho; it will provide the third E service to substantial areas of Michigan, Ohio, Wisconsin, Minnesota, North and South Dakota, Wyoming, Colorado, Utah, Idaho and Washington. Very little of the area which will receive WCCO's E service between Lake Erie on the East and the Rocky Mountains on the West now receives more than 2 such services; and, much more than half receives no or but one such service (Cullum Statement, Pars. 5, 10).

(ii) In the second place, the major portion of the area which will receive the new WCCO E service now has no groundwave service at all; it is "white area" (Cullum Statement, Figs. 5, 9). Thus, the areas to which WCCO will bring a satisfactory grade of skywave service are largely deficient in both groundwave and skywave service. Large areas have neither - in Nebraska, South Dakota, North Dakota, Montana, Wyoming, Idaho, Colorado, Utah; very much larger areas have no groundwave and but one skywave service - in Wisconsin, North and South Dakota, Nebraska, Kansas, Colorado, Utah, Wyoming, Montana, Idaho and Washington.

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Included in one or the other of these two categories are most of Nebraska, Wyoming, Montana, Colorado and Idaho, and almost half of Kansas and South Dakota (Cullum Statement, Figs. 5, 9, 10).

f. The population which will *gain* a Class A or B groundwave service from WCCO's operating with 750 kw and directional antenna is over 1,000,000 in an area of over 750,000 square miles (Cullum Statement, p. 4, Figs. 1, 2). A comparison of the WCCO B contour in Figure 2 and existing B service in Figure 9 (Cullum Statement) shows that this *groundwave* service would be provided to very large "white areas" in eastern South Dakota and Nebraska as well as western Minnesota and western Wisconsin and to even more extensive areas throughout the Northwest with but a single groundwave service. Almost all of this gain in groundwave service can undoubtedly be realized with a directional antenna designed so as to minimize self-interference.

g. The gains (both skywave and groundwave) from a WCCO 750 kw operation with directional antenna are so great that it would be a far more efficient use of the channel to authorize such an operation coincident with a Class II fulltime assignment in California, rather than to choose the latter in place of the 750 kw operation. Thus, whereas the California operation's service would be reduced to 33,602 people overall and to 10,449 in "white areas," WCCO would still provide a new skywave service to over 17,000,000 people in an area of over 600,000 square miles,

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as well as the same expanded and improved ground service it would have without the California operation (Cullum Statement, p. 4). But, the cost of permitting the California Class II operation at the same time as WCCO's 750 kw operation is great. Class E service would be lost to 2,000,000 people; and over 5,000,000 people would lose WCCO skywave service (Cullum Statement, p. 4). Since this area and population which would be deprived of WCCO skywave service has no groundwave service for the most part and some of it not much skywave service (Cullum Statement, Figs. 6, 9, 10), the loss is entirely disproportionate to the gain of 10,000 "white area" people which the Class II assignment in California would achieve.

IV. The Selective Approach of Increased Power on Some Channels and Breakdown of Others is Far Superior to a Wholesale Breakdown of All Channels.

10. Since the population density in the Atascadero "white area" enclave is reasonably typical of the density in the other western states to which the other 22 Class II assignments on I-A channels would be assigned, the overall gain in service to "white area" populations to be expected from all 23 such Class II stations is only 690,000 people or, at most, 1,610,000 (23 times the 30,000 (or 70,000) to be gained by the Atascadero operation on 830 kc). This gain from all the breakdowns is to be compared with the more than 25,000,000 people still residing in "white areas" (Notice (Part III), Par. 10). It should also be compared with the 22,000,000 people who will gain a Class E

service from WCCO alone, if it is authorized to operate with 750 kw, especially as a very large number of these people has neither groundwave nor a good (Class E) skywave service (See Par. 9(e), above). If the gains to be achieved by the suggested breakdown of 830 kw are typical — and such a conclusion is not unreasonable — then the wholesale breakdown of the 23 I-A channels will hardly make a dent in the basic problem to be solved. Indeed, the conclusion is unavoidable that this approach is a serious step backwards.

11. In any event, so far as 830 kc is concerned, the foregoing case study demonstrates fully that WCCO operating with 750 kw and a directional antenna will achieve overwhelmingly greater gains on that channel than will the alternative approach of a second (Class II) fulltime assignment in California.

12. The abandonment in Part III of the selective approach of Part II (with its combination of increased power on some channels and a breakdown of others) is completely unsound. The Part III approach rests upon two criticisms of Part II.

(a) First, it is claimed that there will be losses of groundwave service and "dislocation" of skywave service (Notice (Part III), Par. 7). But, this point, even if true, could apply only to 5 (actually 4, since 770 kc was one of the 5) of the 25 channels for which a restriction of signal to the west was proposed. It does not apply to the other 7 clears the breakdown of which would not affect the present operation of the I-A station involved. Nor can it apply to the 12 scheduled for increased

power. Moreover, it is highly likely that any loss of groundwave service in the East is more than compensated by gains elsewhere. Reference need be made only to the KOB decision which involved a painstakingly thorough balancing of gains and losses under just such a situation. And, it is to be remembered that even though there are more "white area" people in the East than in the West (Notice (Part III), Par. 10), the need for standard broadcast service is far greater in the broad and thinly-settled regions of the Rocky Mountains. Not only is skywave service far less (See Cullum Statement, Fig. 10), but most, if not all, of the eastern areas which might lose some groundwave service enjoy multiple choices of both FM and TV service — a privilege denied millions of people in the very western areas which are without or deficient in standard broadcast groundwave and skywave service.

(b) Second, the point is made that power is not the only factor determining the quality of skywave service (Notice (Part III) Pars. 8, 9). There is no dispute on this point. But, its truth in no way derogates from the fact that greater power for a I-A station will greatly increase the quality of its skywave service, and, if aimed in the right direction, will provide a much needed service to large populations and areas. The Commission itself has made this clear by recognizing that improvement in service must come through skywave (Notice (Part II), Par. 41); Notice (Part III), Par. 12), and that this can come only through increased power for I-A stations (Notice (Part II), Pars. 42, 52-54; Notice (Part III), Par. 12). So far as 830 kc is concerned, the above case study is

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sufficient proof that increased power for WCCO is the best — indeed the only sensible — way of increasing service to areas which need it.

(c) Finally, it is concluded in Part III — apparently on the basis of the two points discussed above — that to reduce the "white areas" a wholesale breakdown of all of the I-A channels is necessary or desirable (Notice (Part III), Par. 12). This is obviously a complete *non sequitur*. Even if the criticisms of Part II were sound, it does not follow that a complete abandonment of its approach and a wholesale switch to the Part III approach is the best way of attacking the basic problem in this proceeding. On the contrary, it is entirely unnecessary to give up the unchallengeable advantages of the Part II approach in order to avoid any disadvantages it may have. It is entirely possible to have the best of both possible worlds — namely, of increased power *and* a breakdown. The present conditions of use of the 23 to 25 clear channels varies so greatly — in location of the I-A's stations, in the need for service of pertinent areas, in foreign problems, etc. — that all of them cannot be treated alike. What is needed is a carefully selective approach to the resources available for attacking the problem so as to ensure that each one of the 23-25 clear channels is exploited in the manner which will make the best possible use of that channel and the greatest possible contribution to solving the problem at hand.

13. One final matter. It seems perfectly obvious that increased power for some at least of the I-A clear channel stations

[2833]

is by far the best method — technically, engineering-wise — of improving service to "white" and other needful areas. Accordingly, it must be other considerations — namely, economic — which inhibit adoption of the one measure which can make a significant dent in the problem. But, the answer to the economic problem presented by one station in a market having more power than another (or of one present I-A station obtaining an increase in power which will be denied to another I-A station) is certainly not so obviously adverse as to require rejection of that measure. It is highly doubtful that the grant of 750 kw to one (or 12) I-A station(s) will cause much injury to competitor(s). There are stations today in the same market with greater disparity of power than will prevail between 50 and 750 kw stations. And, in many markets, stations with less or the least power are the most popular. Moreover, the costs of operating a 750 kw station will be so great and its rates will accordingly be so high, that no loss of business by local competitors is to be expected. In fact, it is likely that many local advertisers will be priced off the 750 kw station, which will have to seek its support among national advertisers requiring large audiences. In any event, some increased power in some instances at least seems so obviously desirable and necessary, the proper course is not to permit the economic problem, sub silentio, to be a bar, but, if it is necessary, to face it, study it, and then resolve it. It is submitted that once the economic problem is unfolded and studied,

it will not be as much of a bugaboo as it seemed to have been heretofore.

V. Conclusions

1. An increase in WCCO's power to 750 kw and a directional antenna beaming the greater part of the energy westward represents the best possible use which can be made of 830 kc.

(a) WCCO is favorably located in the central part of the country to reach areas which greatly need better service.

(b) WCCO's present 50 kw operation does not adequately exploit a scarce natural resource.

(c) WCCO's 750 kw operation with DA achieves gains in skywave and groundwave services in areas deficient in both which completely overshadow the insignificant reduction in "white area" which the optimum assignment on a breakdown of 830 kc can produce.

2. The breakdown of 830 kc so as to put a fulltime Class II operation in California, even if given the optimum location, will achieve so little direct benefits, that it represents a far worse use of 830 kc, than if present conditions remain undisturbed.

Respectfully submitted,
Midwest Radio-Television, Inc.
By /s/ Peter Shuebruk
Fly, Shuebruk, Blume & Gaguine

* * *

Its Attorney

April 1, 1960

[2835]

[Received Apr. 1, 1960 - FCC]

ENGINEERING STATEMENT ON BEHALF OF
MIDWEST RADIO-TELEVISION, INC.,
RADIO STATION WCCO
MINNEAPOLIS, MINNESOTA

PREPARED BY THE FIRM OF
A. EARL CULLUM, JR.,
CONSULTING ENGINEERS
600315

[2836]

ENGINEERING STATEMENT OF D.A. PETERSON OF THE FIRM OF A. EARL CULLUM, JR., CONSULTING ENGINEERS, IN CONNECTION WITH ENGINEERING STUDIES MADE FOR MIDWEST RADIO-TELEVISION, INC., LICENSEE OF RADIO STATION WCCO, MINNEAPOLIS, MINNESOTA

* * * * * *

I, D. A. Peterson, am an engineer associated with the firm of

A. Earl Cullum, Jr., Consulting Engineers, with offices located in Dallas, Texas. I received the Bachelor of Science Degree in Electrical Engineering from Southern Methodist University in 1934. I have been employed in an engineering capacity by broadcast stations since 1933. I have been a partner in the firm of A. Earl Cullum, Jr., since 1940. I have submitted reports of a technical nature to the Federal Communications Commission regularly, and I have appeared before the Federal Communications Commission as an expert engineering witness. I am a Senior Member of the Institute of Radio Engineers.

This firm has been employed by Midwest Radio-Television, Inc., to make studies and prepare engineering exhibits in response to the Federal Communications Commission Third Notice of Further Proposed Rule Making in Docket No. 6741 adopted September 18, 1959, and released September 22, 1959.

Radio Station WCCO operates on 830 kilocycles with 50 kilowatts of power and a nondirectional antenna unlimited time in the vicinity of Minneapolis, Minnesota. The Third Notice of Further Proposed Rule Making invites comments regarding the plan of assigning a Class II station on 830 kilocycles in the State of California and regarding the use of power in excess of 50 kw by the Class I-A station on 830 kilocycles.

Studies have been made to compare the present groundwave and skywave service of WCCO with that which could be obtained if WCCO were to operate with 750 kilowatts of power and a directional antenna. In order that the operation with 750 kilowatts not increase the interference to existing foreign stations XELA in Mexico City, Mexico, and CMBZ in Havana, Cuba, a directional antenna was designed to limit the radiation toward those stations to no more than that from the existing operation of WCCO with 50 kilowatts of power and a nondirectional antenna. In addition, the pattern was further shaped so as to direct the main lobe to the west as appeared most suitable to the Commission as stated in paragraph 54 of the Further Notice of Proposed Rule Making adopted and released April 15, 1958. Copies of the horizontal radiation patterns for both the 50-kilowatt nondirectional and 750-kilowatt directional operation of WCCO are attached.

Preliminary studies were made of the entire state of California to locate areas and populations where a Class II station could provide a new service in under-served areas. These studies were made by referring to Exhibit 3 of the Clear Channel Broadcasting Service (CCBS) Comments dated August 15, 1958, in Docket No. 6741, to determine where the under-served areas were located, and by referring to the 1950 United States Census figures and maps to determine the density of population in the under-served areas. From these studies three locations of under-served areas were found with reasonably dense population. These areas were in the vicinities of Atascadero, Eureka, and Redding, California. Preliminary population studies of these three areas were then made by using a typical directional antenna pattern for operation on 830 kilocycles with 10 kilowatts of power that would not cause interference within the existing WCCO Type "F" service area as limited by atmospheric noise. The attached APPENDIX I contains copies of maps that were prepared to determine the areas that could be served with the typical pattern and contains a tabulation of the results of the preliminary population studies. As a result of these studies, the Atascadero area was chosen as the one which would provide the most service to under-served areas in California. The directional antenna pattern was then perfected for the Atascadero area. A copy of the antenna pattern is attached.

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PROJECTION OF CONTOURS

The WCCO groundwave contours were determined primarily from the Columbia Broadcasting Company Report Number E-464 entitled WCCO FIELD INTENSITY SURVEY dated February 3, 1941. Copies of this report were made available to members of the Broadcast Bureau in connection with the hearing in Docket No. 11227. Where the groundwave contours extended beyond the extent of the measurements, the conductivity shown on Figure M3 of the rules was used. The Atascadero Class II groundwave contours were determined by use of the conductivity shown on Figure M3. Where two or more values of ground conductivity were encountered along a radial, the equivalent-distance method of combining conductivities was followed.

The groundwave contours projected were for the type "A" and "B" services as defined in Exhibit 109 in Docket No. 6741. In the case of WCCO the type "A" and "B" services were taken as the 1.5-mv/m contour and the 0.5-mv/m contour respectively, but the distortion zone from self interference was not delineated. The type "A" and "B" services for the Atascadero Class II station were those limited by skywave interference from WCCO in accordance with the ratios of desired groundwave to undesired skywave from WCCO as established in Exhibit 109. The Atascadero groundwave service areas were computed to be limited as follows:

Limitation From:	WCCO 50 KW ND	WCCO 750 KW DA
Type "A" service	5.4 mv/m	37.5 mv/m
Type "B" service	2.2 mv/m	15.5 mv/m

The WCCO skywave contours were projected for type "E" and "F" services in accordance with the procedure specified in Exhibit 109. Consideration was given to the latitude effect for various paths. Vertical radiation patterns were used to properly account for changes in radiation at angles above the horizon. The type "E" service is 0.25 mv/m, 60% time skywave signal as limited by atmospheric noise, and the type "F" service is 0.25 mv/m, 30% time skywave service as limited by atmospheric noise. The reference for the atmospheric noise used was Figure 14-4 of Exhibit 264 in Docket No. 6741. The noise figures were converted from 1000 kc to 830 kc for these studies in accordance with the procedure specified in Exhibit 109. Interference to the WCCO type "E" and "F" service areas from the Atascadero Class II station was determined according to the procedure specified in Exhibit 109.

ATTACHED FIGURES

The following attached figures were prepared under my supervision to show the results of the studies made:

1. Map showing the type "A" and "B" service areas for the operation of WCCO with 50 kilowatts of power and a nondirectional antenna
2. Map showing the type "A" and "B" service areas for the operation of WCCO with 750 kilowatts of power and a directional antenna.
3. Map showing the 0.25-mv/m, 30% time contour and type "F" service area for the operation of WCCO with 50 kilowatts of power and a nondirectional antenna, as limited by noise and with no Class II station on 830 kilocycles in California.
4. Map showing the 0.25-mv/m, 30% time contour and type "F" service area for the operation of WCCO with 50 kilowatts of power and a nondirectional antenna, as limited by noise and as limited by a Class II station on 830 kilocycles at Atascadero, California.
5. Map showing the type "E" and "F" service areas for the operation of WCCO with 750 kilowatts of power and a directional antenna as limited by noise and with no Class II station on 830 kilocycles in California.
6. Map showing the type "E" and "F" service areas for the operation of WCCO with 750 kilowatts of power and a directional antenna, as limited by noise and as limited by a Class II station on 830 kilocycles in Atascadero, California.

7. Map showing the type "A" and "B" service areas for a Class II station on 830 kilocycles at Atascadero,

California, as limited by the operation of WCCO with 50 kilowatts of power and a nondirectional antenna.

8. Map showing the type "A" and "B" service areas for a Class II station on 830 kilocycles at Atascadero, California, as limited by the operation of WCCO with 750 kilowatts of power and a directional antenna.
9. Copy of Exhibit 3 of CCBS Comments dated August 15, 1958, showing type "B" radio service nighttime in the United States as of January 1, 1957.
10. Copy of Figure 28 from CCBS Exhibit 340 in Docket No. 6741 showing type "E" - 60% nighttime service of all Class 1A and 1B stations as of 1946. WCCO does not develop a type "E" service within the United States.
11. Horizontal radiation pattern for the operation of WCCO with 50 kilowatts of power and a nondirectional antenna.
12. Horizontal radiation pattern for the operation of WCCO with 750 kilowatts of power and a directional antenna.
13. Horizontal radiation pattern for a hypothetical Class II station for operation on 830 kilocycles with 10 kilowatts of power and a directional antenna at Atascadero, California.

AREAS AND POPULATIONS

Land areas were determined with a polar planimeter on the original coverage maps. Populations were determined from United States 1950 census figures and maps. The Atascadero type "A" and "B" services were assumed adequate for urban populations, hence no deductions were made from the total population enclosed. The WCCO type "A" service was assumed adequate for urban populations, except that 10% of the population of cities over 10,000 outside the 10-mv/m contour was deducted. The WCCO type "B", "E", and "F" services were assumed adequate only for rural populations, so all urban population was deducted. The WCCO type "E" service for 750 kilowatt operation would provide some service to urban areas, but studies of such service were not made.

Within the type "A" and "B" service areas, populations were studied by minor civil divisions. Within the type "E" and "F" service areas, populations were studied by counties. In each case, uniform distribution of rural population was assumed for each minor civil division and county respectively.

The results of the analyses have been assembled in tabular form on the following page.

[2839]

ANALYSIS OF AREAS AND POPULATIONS SERVED BY WCCO
WITH NO CLASS II STATION ON 830 KC IN CALIFORNIA

	WCCO 50 KW ND		WCCO 750 KW DA	
	Square Miles	Population	Square Miles	Population
WCCO Type "A" service	32,946	2,130,365	73,413	3,031,175
WCCO Type "B" service	37,119	722,105	72,789	885,285
WCCO groundwave service	70,065	2,852,470	146,202	3,916,460
WCCO Type "E" service	0	0	1,504,015	18,064,406
WCCO Type "F" service	645,615	10,175,326	638,454	14,249,134
WCCO skywave service	645,615	10,175,326	2,142,469	32,313,540
WCCO Total service	715,680	13,027,796	2,288,671	36,230,000

ANALYSIS OF AREAS AND POPULATIONS SERVED BY WCCO AND BY A CLASS II STATION ON 830 KC WITH 10 KW OF POWER DIRECTIONAL ATASCADERO, CALIFORNIA

	WCCO 50 KW ND		WCCO 750 KW DA	
	Square Miles	Population	Square Miles	Population
WCCO Type "A" service	32,946	2,130,365	73,413	3,031,175
WCCO Type "B" service	37,119	722,105	72,789	885,285
WCCO groundwave service	70,065	2,852,470	146,202	3,916,460
WCCO Type "E" service	0	0	935,864	16,087,075
WCCO Type "F" service	645,615	10,175,326	346,719	11,143,075
WCCO skywave service	645,615	10,175,326	1,282,583	27,230,150
WCCO Total service	715,680	13,027,796	1,428,785	31,146,610
Class II Type "A" service	2,165	47,972	1,156	10,953
Class II Type "B" service	1,936	22,989	881	22,649
Class II groundwave service	4,101	70,961	2,037	33,602
WCCO and Class II combined service	719,781	13,098,757	1,430,822	31,180,212

ANALYSIS OF "WHITE" AREAS THAT WOULD BE SERVED BY THE CLASS II STATION AT ATASCADERO, CALIFORNIA

	WCCO 50 KW ND		WCCO 750 KW DA	
	Square Miles	Population	Square Miles	Population
Class II Type "A" service	291	22,449	193	5,622
Class II Type "B" service	604	7,240	330	4,827
Class II groundwave service	895	29,689	523	10,449

[2840]

SUMMARY

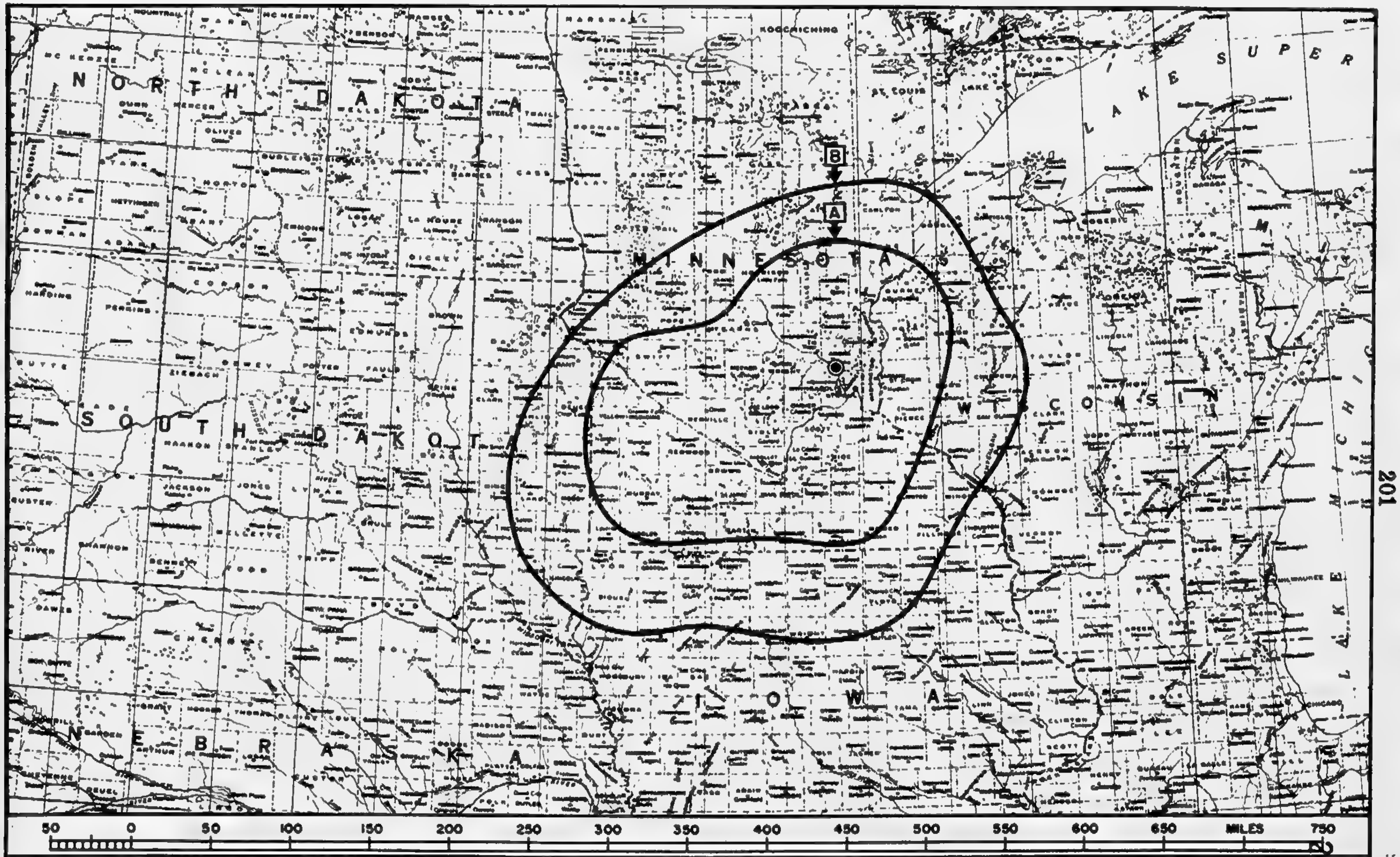
If WCCO were to increase power from 50 kw with a nondirectional antenna to 750 kw with a directional antenna, and if there were no Class II station on 830 kilocycles in California, the groundwave coverage would increase from an area of 70,065 square miles with 2,852,470 persons to an area of 146,202 square miles with 3,916,460 persons, a gain of 76,137 square miles with 1,063,990 persons, and the skywave coverage would increase from an area of 645,615 square miles with 10,175,326 persons to an area of 2,142,469 square miles with 32,313,540 persons, a gain of 1,496,854 square miles with 22,138,214 persons, for an overall gain of groundwave and skywave coverage of 1,572,991 square miles with 23,202,204 persons.

If a Class II station were to operate on 830 kc at Atascadero with 10 kw of power, the skywave service of WCCO would decrease from an area of 2,142,469 square miles with 32,313,540 persons to an area of 1,282,583 square miles with 27,230,150 persons, for a loss of 859,886 square miles with 5,083,390 persons, for which the Class II station would provide service to only 2,037 square miles with 33,602 persons.

The attached figures were prepared under my supervision and are true and correct to the best of my knowledge and belief.

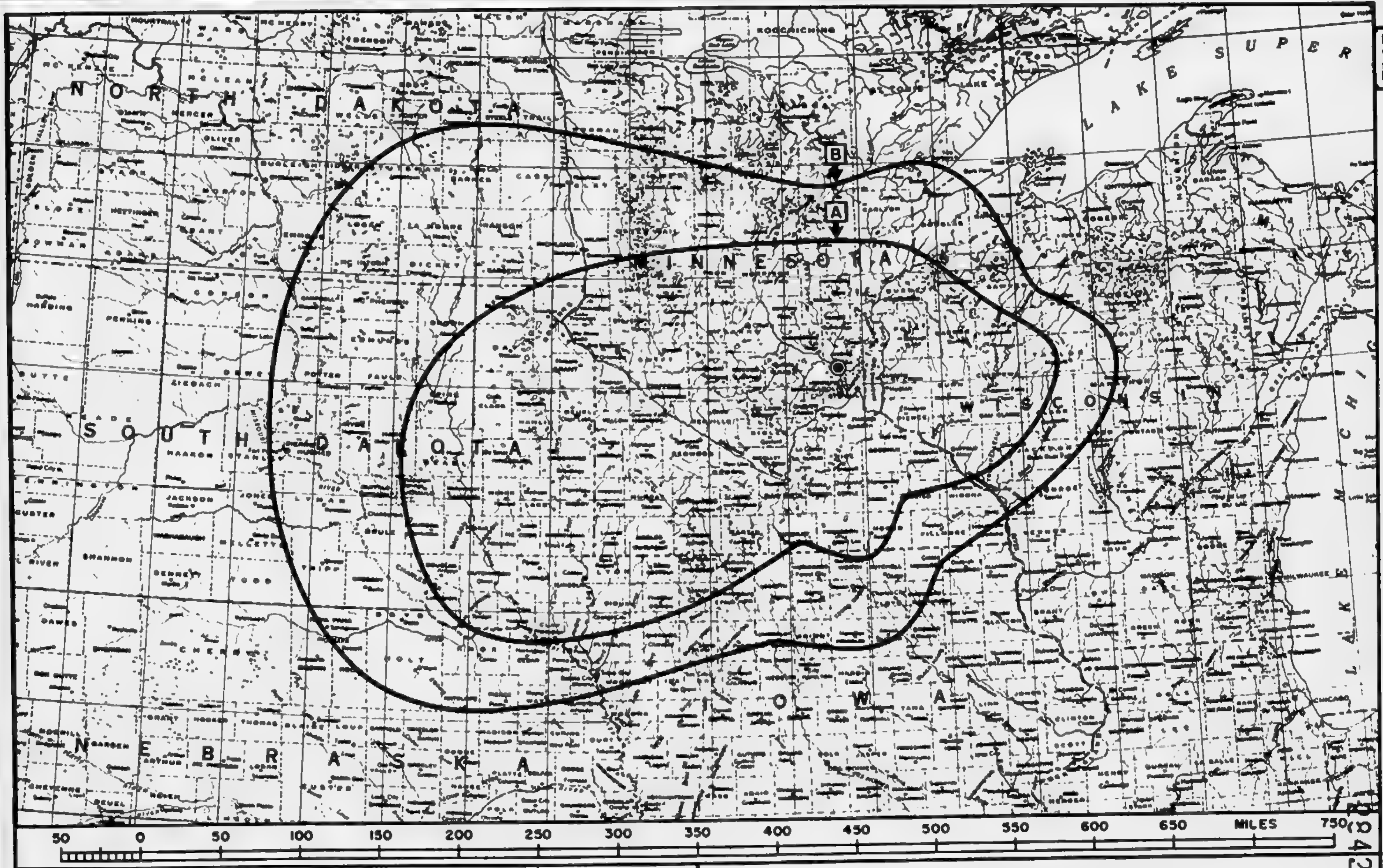
/s/ D. A. Peterson

[JURAT dated March 26, 1960 and SEAL]


NORTH DAKOTA
SOUTH DAKOTA
NEBRASKA
MINNESOTA
IOWA
WISCONSIN
LAKE SUPERIOR
LAKE MICHIGAN
B
A
50
0
50
100
150
200
250
300
350
400
450
500
550
600
650
MILES
750

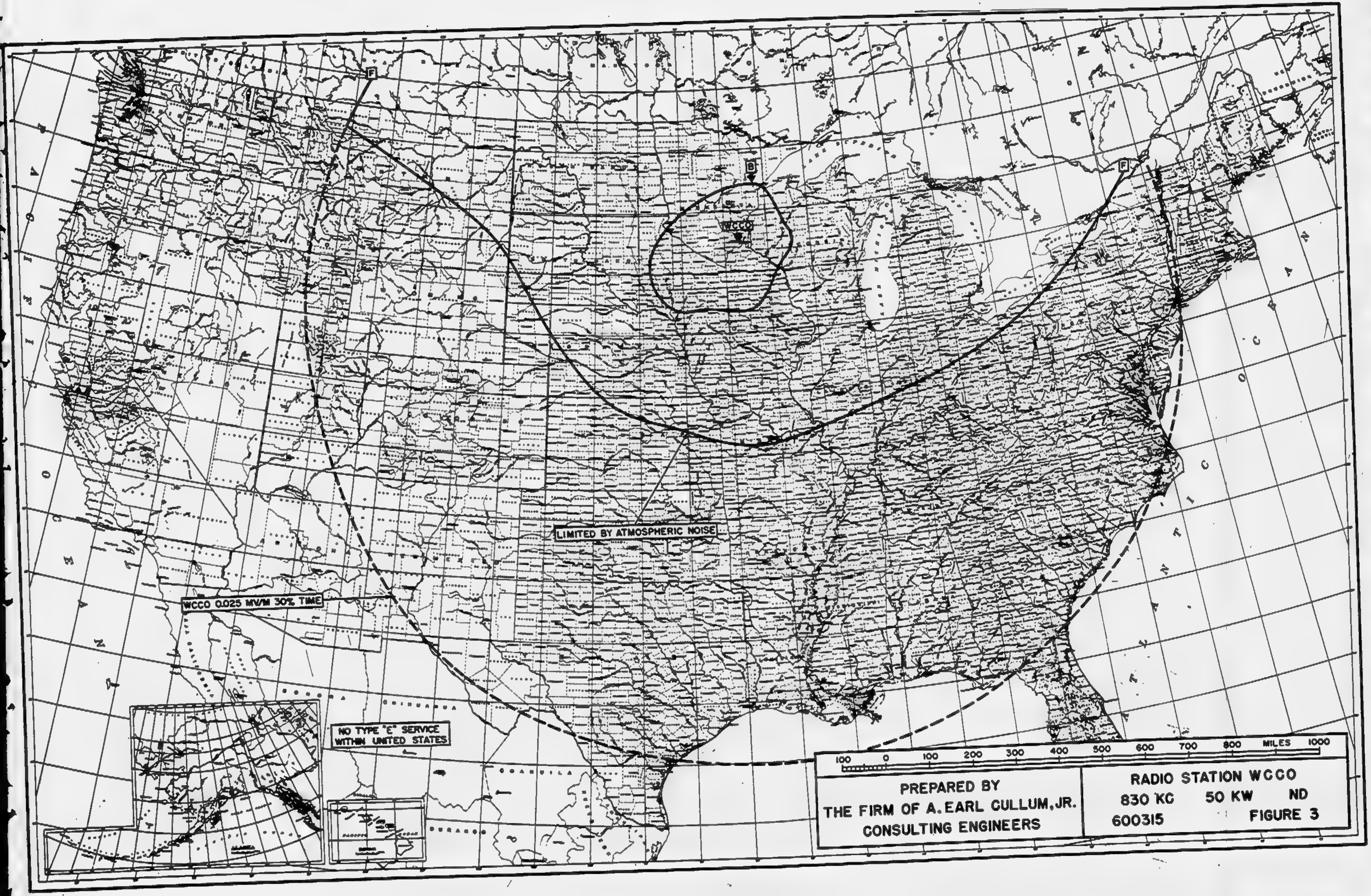
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

RADIO STATION WCCO
830 KC 50 KW ND
600315 FIGURE I


NORTH DAKOTA
KOOCHICHING
LAKE SUPER
B
A
MINNESOTA
SOUTH DAKOTA
WISCONSIN
LAKE MICHI
IOWA
NEBRASKA
50
0
50
100
150
200
250
300
350
400
450
500
550
600
650
MILES
750

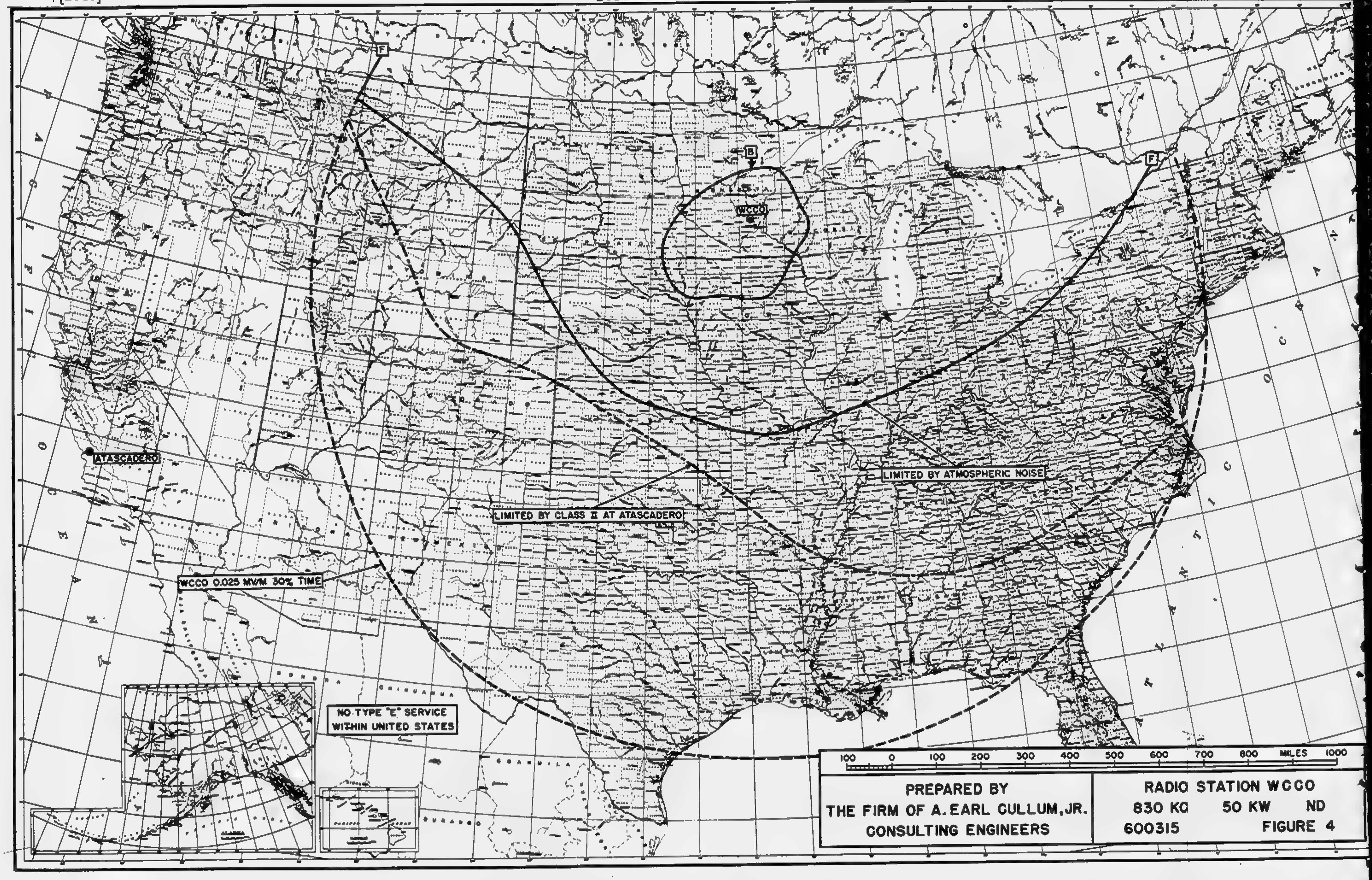
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

RADIO STATION WCCO
830 KC 750 KW DA
600315 FIGURE 2


F
B
WCCO
F
LIMITED BY ATMOSPHERIC NOISE
WCCO 0.025 MV/M 30% TIME
NO TYPE "E" SERVICE WITHIN UNITED STATES
PACIFIC OCEAN
ATLANTIC OCEAN
100 0 100 200 300 400 500 600 700 800 MILES 1000

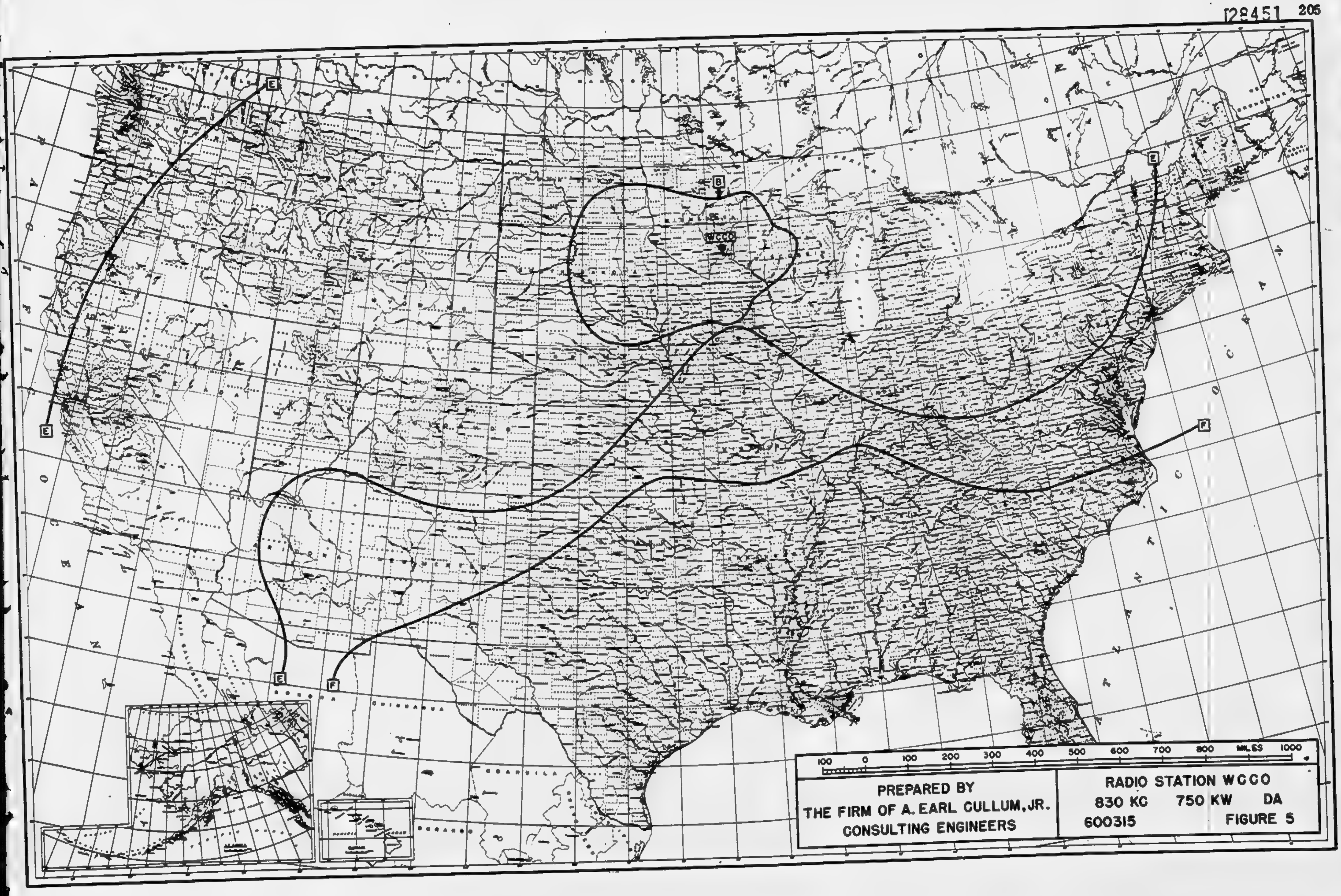
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

RADIO STATION WCCO
830 KC 50 KW ND
600315 FIGURE 3


F
B
WCCO
F
ATASCADERO
LIMITED BY ATMOSPHERIC NOISE
LIMITED BY CLASS II AT ATASCADERO
WCCO 0.025 MV/M 30% TIME
NO TYPE "E" SERVICE
WITHIN UNITED STATES
PACIFIC OCEAN
ATLANTIC OCEAN
100 0 100 200 300 400 500 600 700 800 MILES 1000

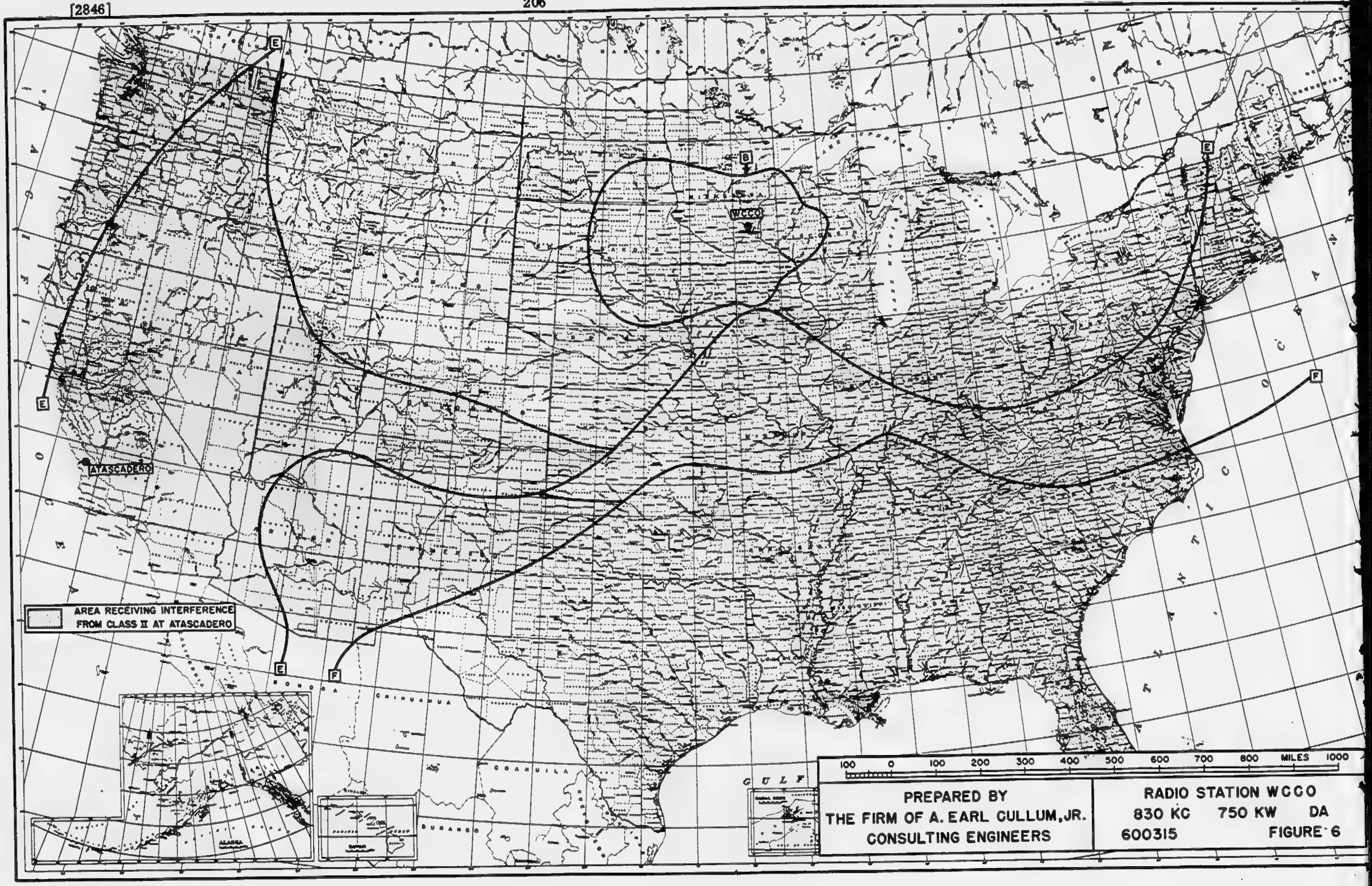
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

RADIO STATION WCCO
830 KC 50 KW ND
600315 FIGURE 4


E
E
E
E
B
WCCO
F
F
PACIFIC OCEAN
ATLANTIC OCEAN
ALASKA
100 0 100 200 300 400 500 600 700 800 MILES 1000

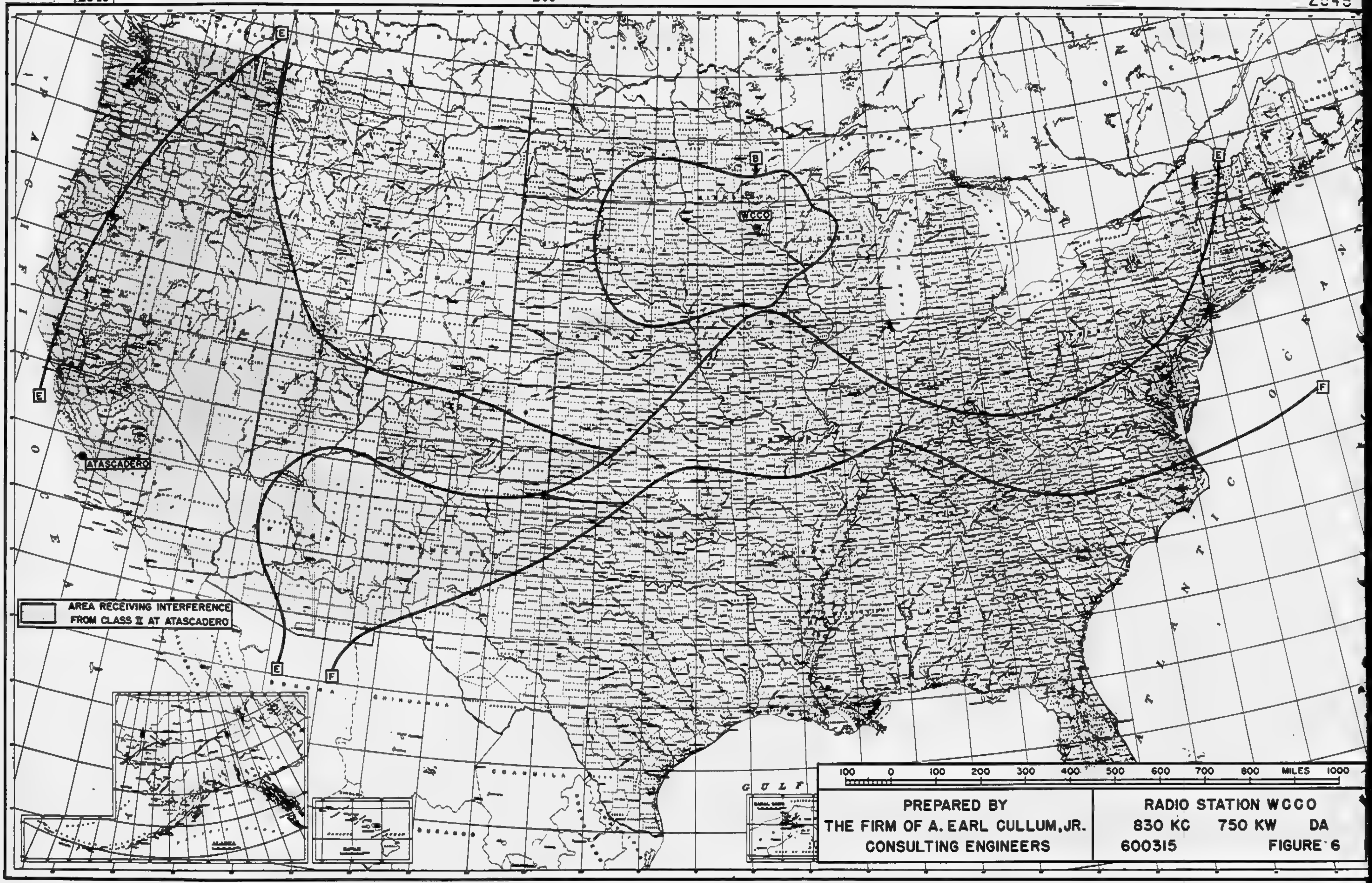
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

RADIO STATION WCCO
830 KC 750 KW DA
600315 FIGURE 5


AREA RECEIVING INTERFERENCE FROM CLASS II AT ATASCADERO
ATASCADERO
WCCO
B
E
E
E
F
F
100 0 100 200 300 400 500 600 700 800 MILES 1000
ALASKA

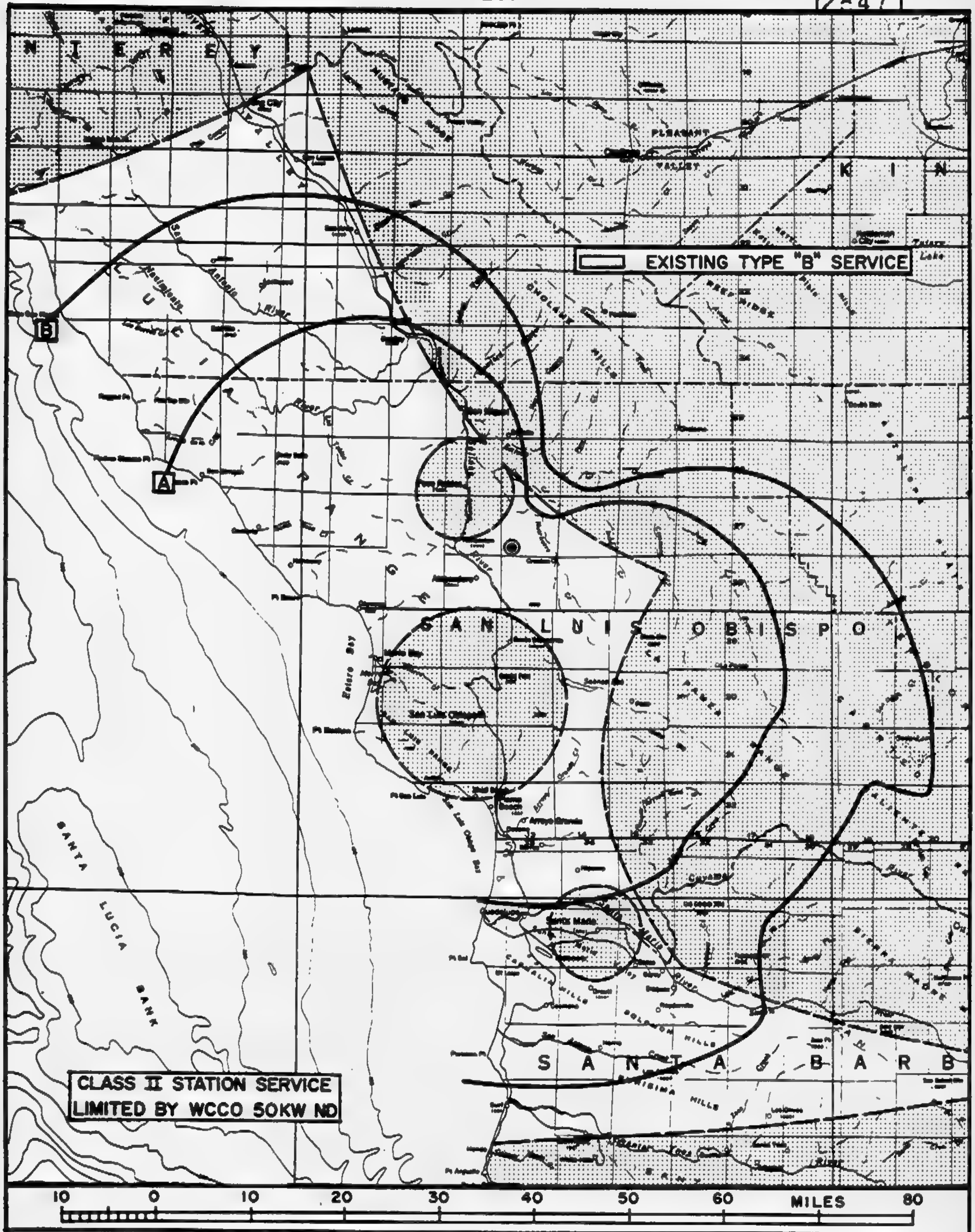
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

RADIO STATION WCCO
830 KC 750 KW DA
600315 FIGURE 6


E
E
E
E
F
F
B
WCCO
ATASCADERO
AREA RECEIVING INTERFERENCE FROM CLASS II AT ATASCADERO
100 0 100 200 300 400 500 600 700 800 MILES 1000
GULF
CHIHUAHUA
COAHUILA
DURANGO
ALASKA
HAWAII

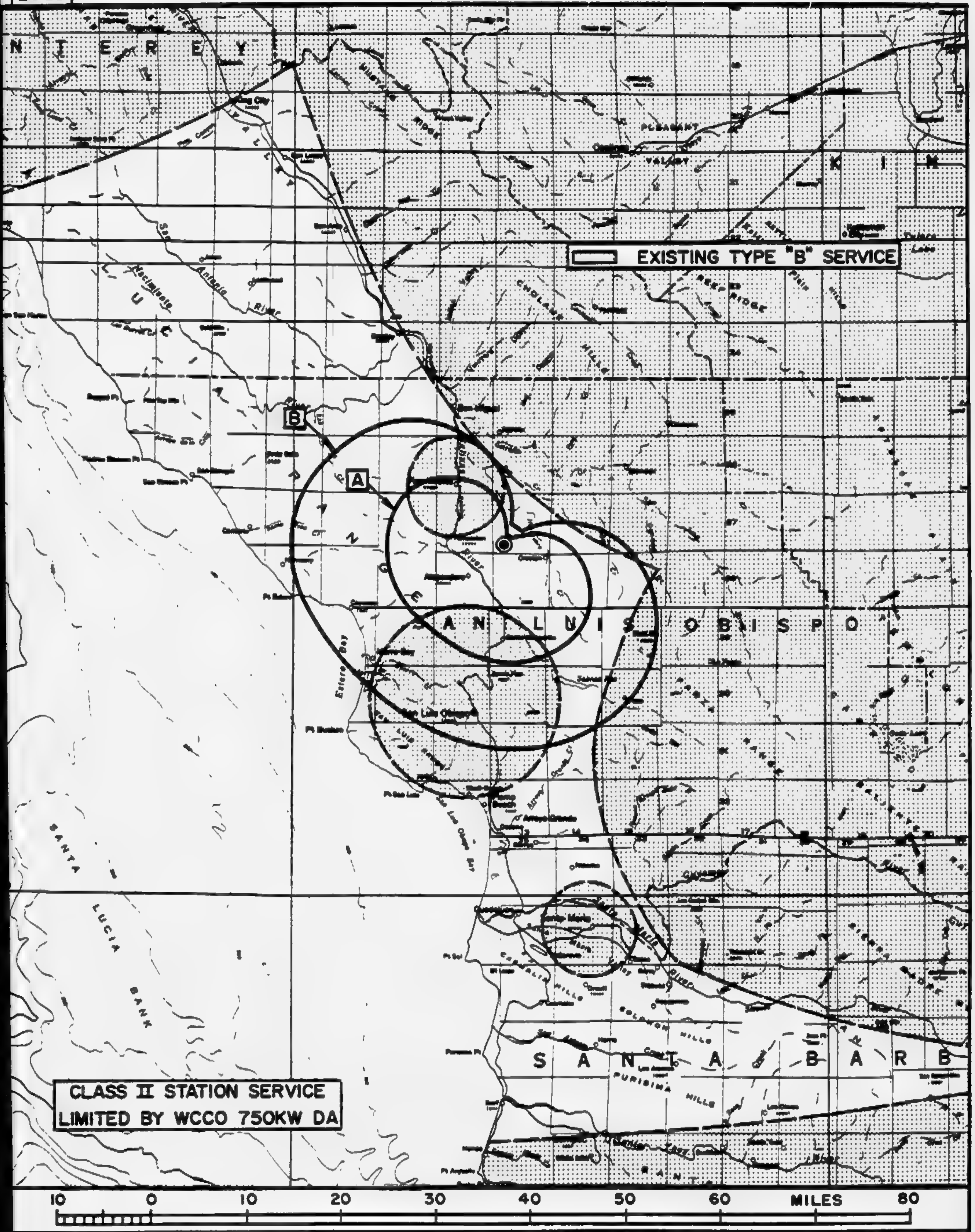
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

RADIO STATION WCCO
830 KC 750 KW DA
600315 FIGURE 6


EXISTING TYPE "B" SERVICE
CLASS II STATION SERVICE
LIMITED BY WCCO 50KW ND
A
B
SAN LUIS OBISPO
SANTA BARB
SANTA LUCIA BANK
K I N
PLEASANT VALLEY
10
0
10
20
30
40
50
60
MILES
80

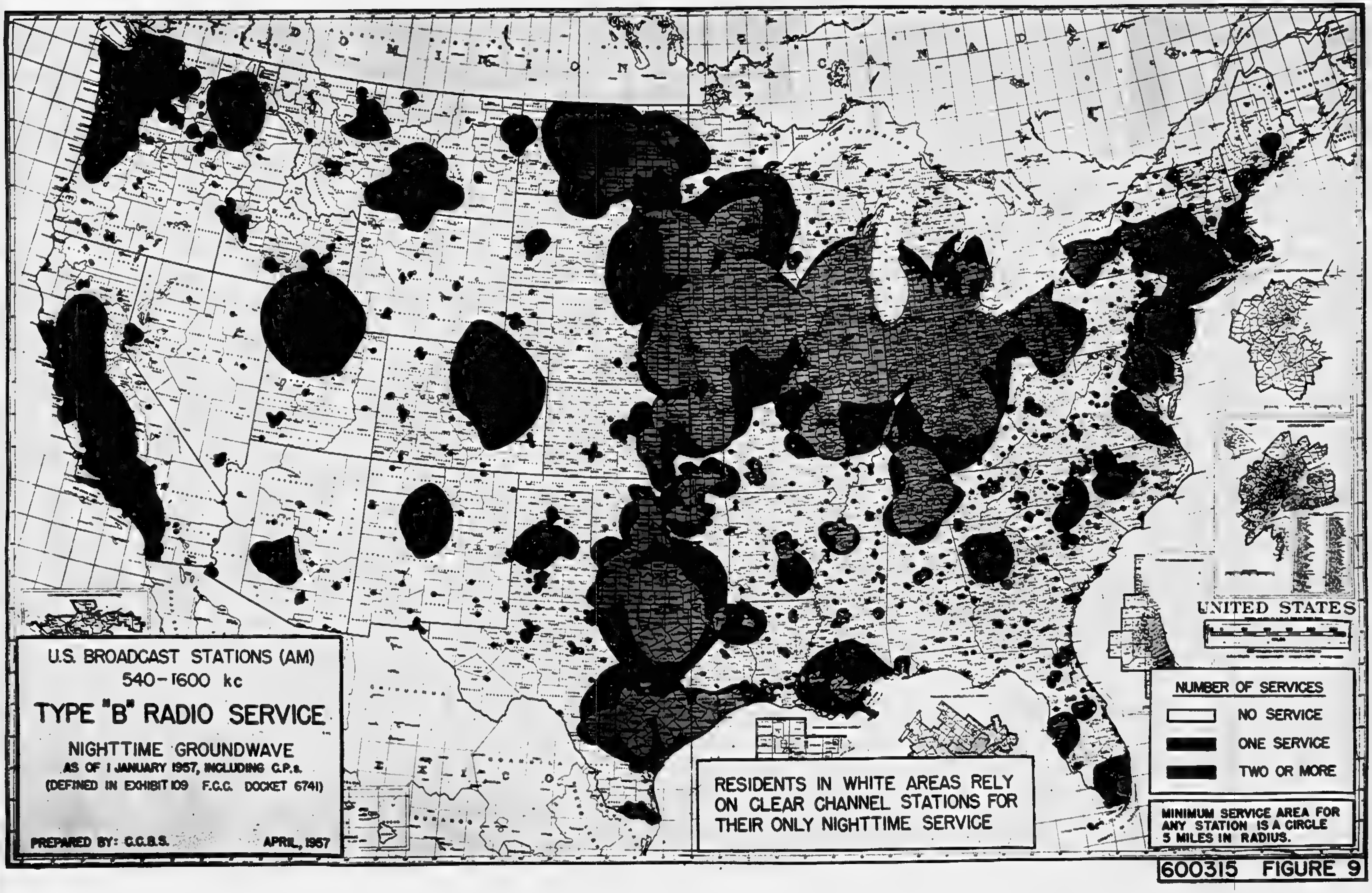
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

ATASCADERO, CALIFORNIA
830 KC 10 KW DA
600315 FIGURE 7


EXISTING TYPE "B" SERVICE
CLASS II STATION SERVICE
LIMITED BY WCCO 750KW DA
A
B
MONTEREY
KINGS
SAN LUIS OBISPO
SANTA BARB
SANTA LUCIA BANK
PLEASANT VALLEY
CHOLAME HILLS
SOLOMON HILLS
PURISIMA HILLS
10 0 10 20 30 40 50 60 MILES 80

PREPARED BY THE FIRM OF A. EARL CULLUM, JR. CONSULTING ENGINEERS	ATASCADERO, CALIFORNIA 830 KC 10 KW DA 600315 FIGURE 8

Ex# 3


DOMINION OF CANADA
UNITED STATES
MEXICO
NUMBER OF SERVICES
☐ NO SERVICE
■ ONE SERVICE
▨ TWO OR MORE

U.S. BROADCAST STATIONS (AM)
540-1600 kc

TYPE "B" RADIO SERVICE

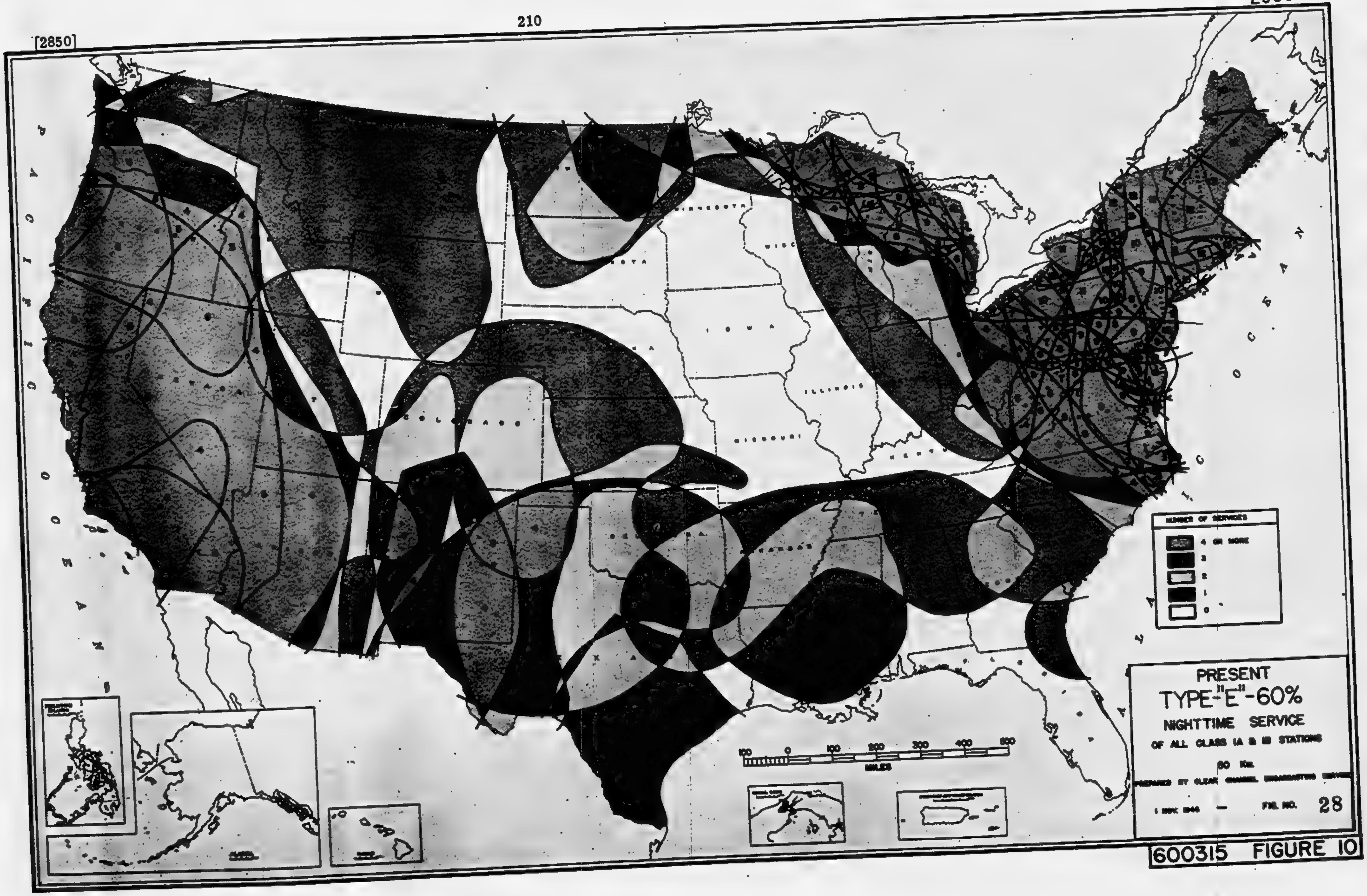
NIGHTTIME GROUNDWAVE
AS OF 1 JANUARY 1957, INCLUDING C.P.s.
(DEFINED IN EXHIBIT 109 F.C.C. DOCKET 6741)

PREPARED BY: C.C.B.S. APRIL, 1957

RESIDENTS IN WHITE AREAS RELY ON CLEAR CHANNEL STATIONS FOR THEIR ONLY NIGHTTIME SERVICE

MINIMUM SERVICE AREA FOR ANY STATION IS A CIRCLE 5 MILES IN RADIUS.

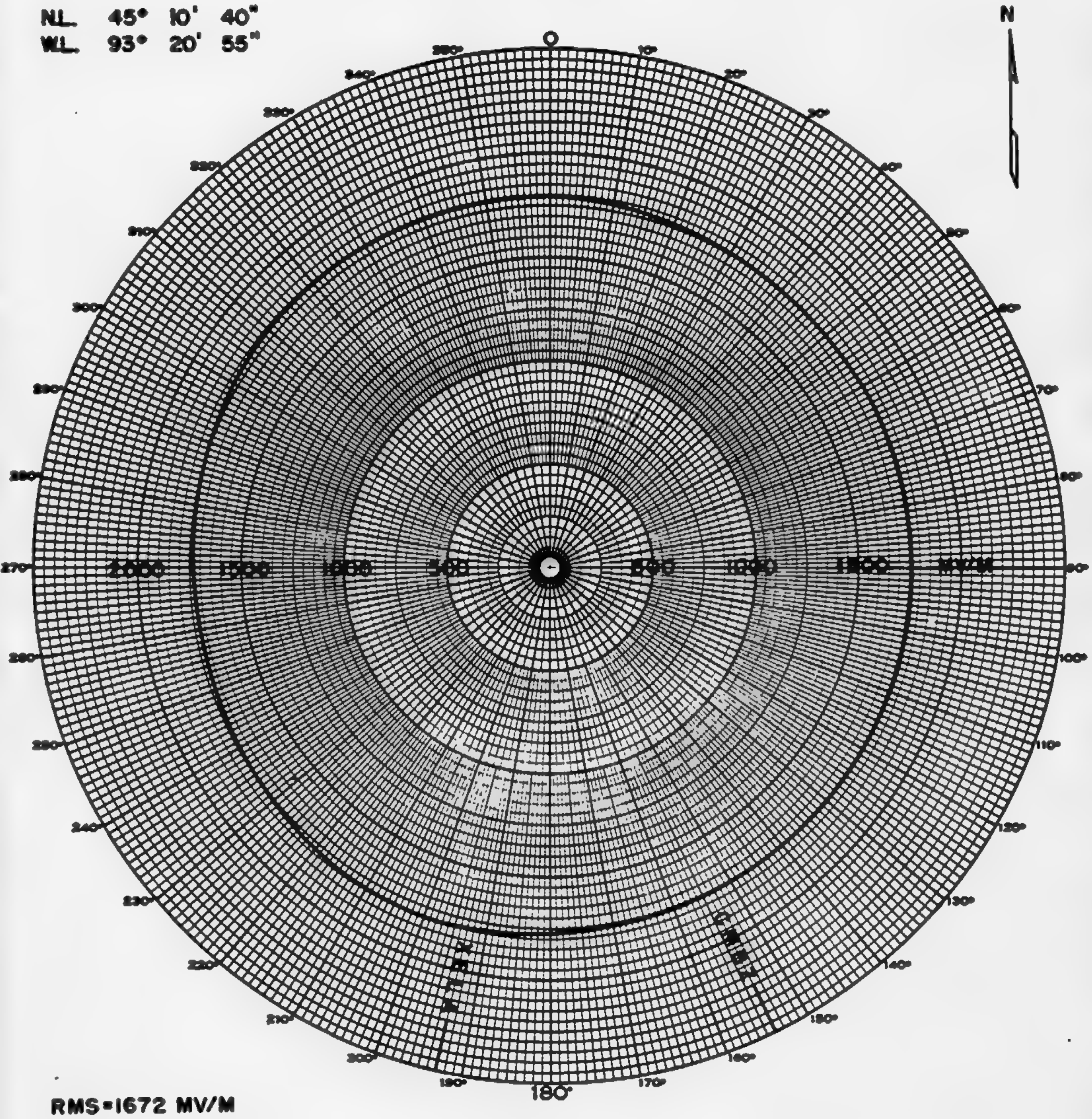
600315 FIGURE 9


PACIFIC OCEAN
ATLANTIC OCEAN
MINNESOTA
IOWA
ILLINOIS
MISSOURI
COLORADO
NUMBER OF SERVICES
4 OR MORE
3
2
1
0
100 0 100 200 300 400 500
MILES

PRESENT
TYPE-"E"-60%
NIGHTTIME SERVICE
OF ALL CLASS IA & IB STATIONS
50 Kc.
PREPARED BY CLEAR CHANNEL BROADCASTING SERVICE
1 NOV 1946 — FIG. NO. 28

600315 FIGURE 10

N.L. 45° 10' 40"
W.L. 93° 20' 55"



RMS=1672 MV/M

① G = 195°

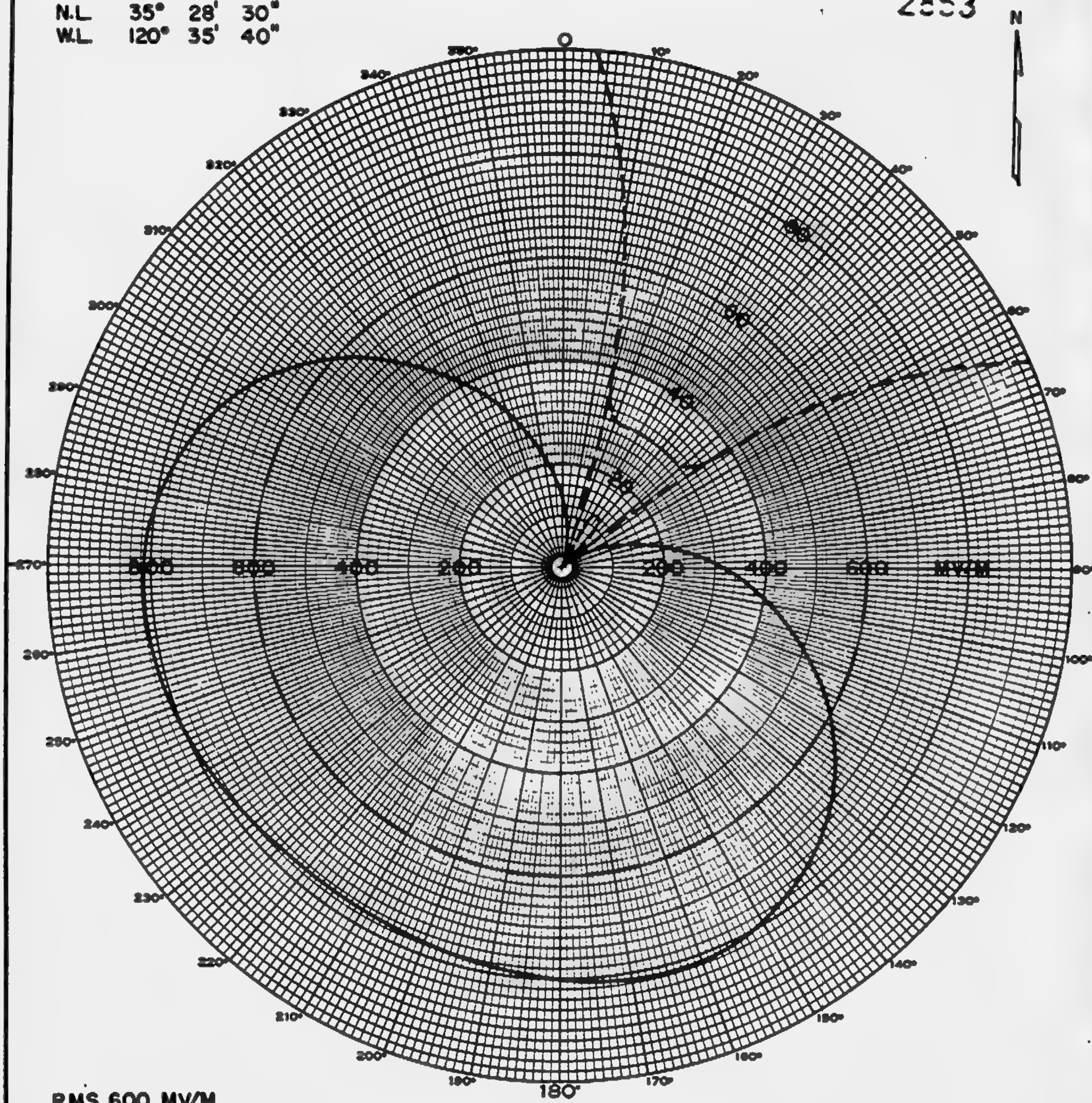
BASED ON MEASUREMENTS

PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

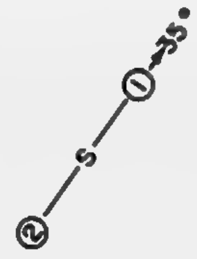
RADIO STATION WCCO
830 KC 50. KW ND
600315 FIGURE 11

2853

N.L. 35° 28' 30"
W.L. 120° 35' 40"



RMS 600 MV/M



S = 110°
G = 90°

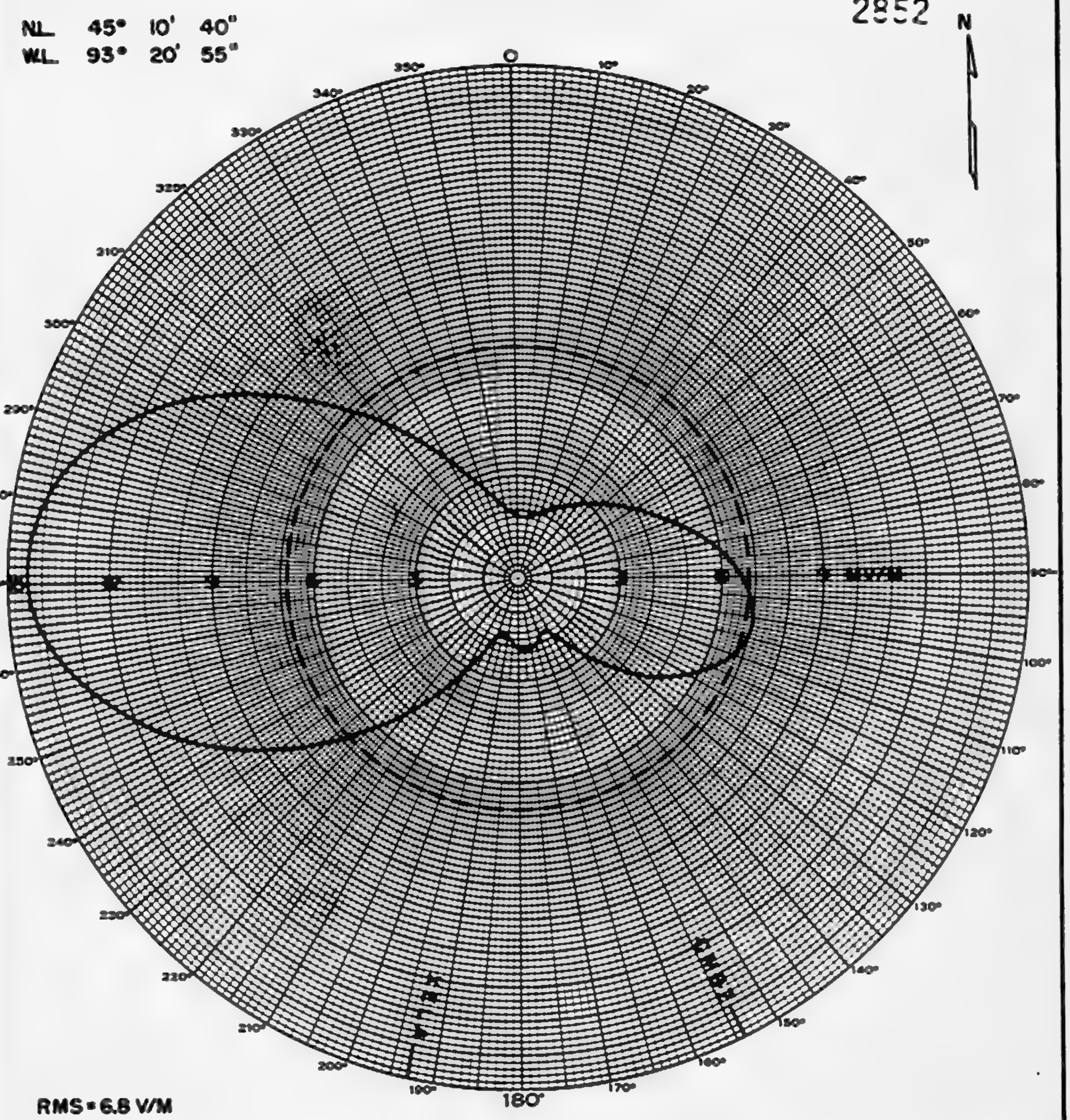
TOWER	FIELD	PHASE
1	1.0	0
2	1.0	-71.8°

PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

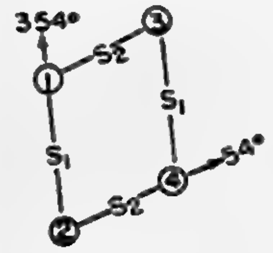
ATASCADERO, CALIFORNIA
830 KC 10 KW DA
600315 FIGURE 13

2852

NL 45° 10' 40"
WL 93° 20' 55"



RMS = 6.8 V/M



S_1 = 177°

S_2 = 100°

G_{1-3} = 195°

G_{2-4} = 90°

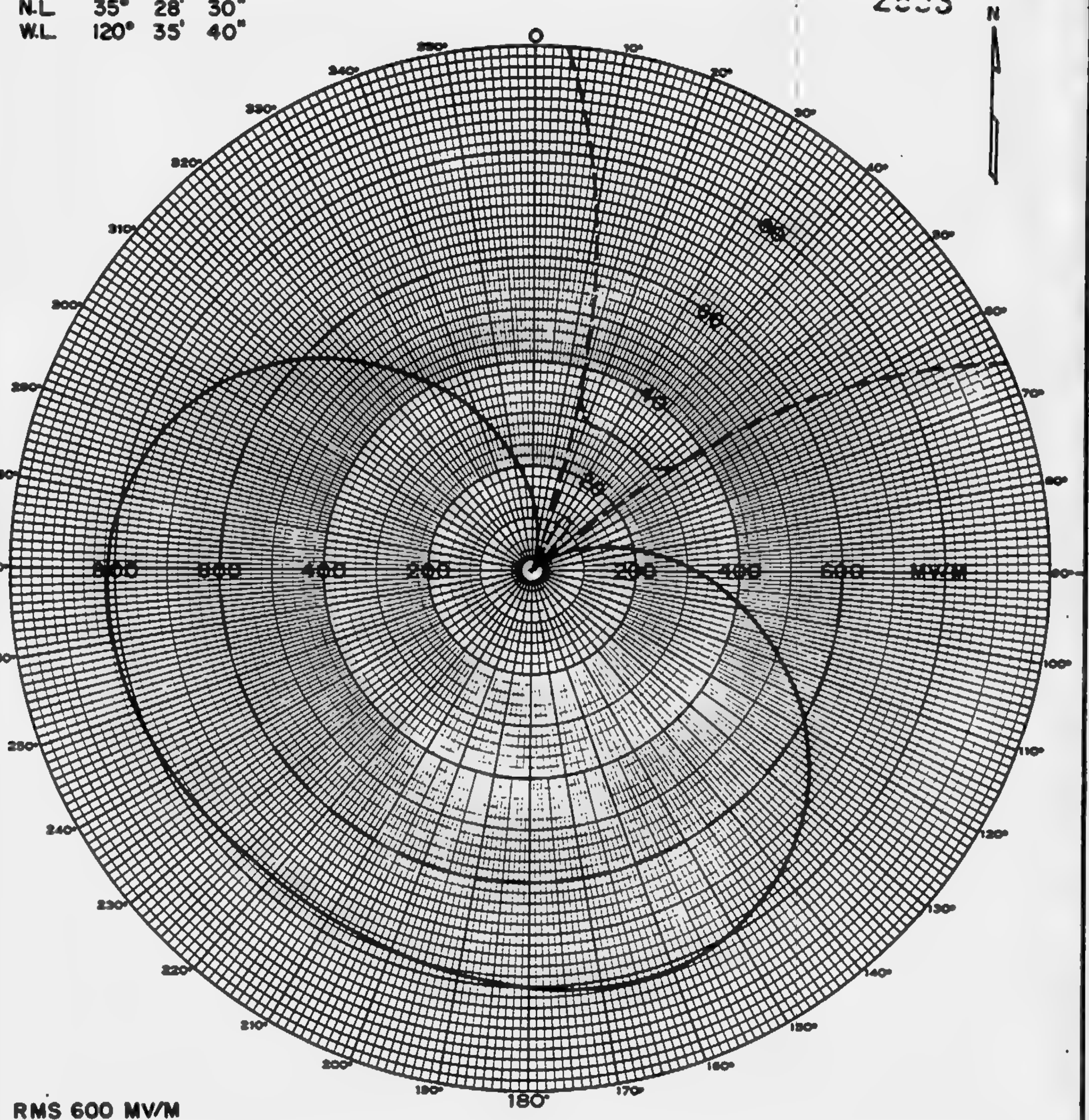
TOWER	1	2	3	4
FIELD	1.0	0.8	1.0	0.8
PHASE	0°	14°	45°	59°

PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

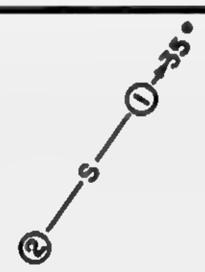
RADIO STATION WCCO
830 KC 750 KW DA
600315 FIGURE 12

N.L. 35° 28' 30"
W.L. 120° 35' 40"

2853



RMS 600 MV/M



S = 110°
G = 90°

TOWER	FIELD	PHASE
1	1.0	0
2	1.0	-71.8°

PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS

ATASCADERO, CALIFORNIA
830 KC 10 KW DA
600315 FIGURE 13

APPENDIX I

PRELIMINARY COVERAGE STUDIES
FOR LOCATING A CLASS II STATION
IN THE STATE OF CALIFORNIA
FOR OPERATION ON 830 KILOCYCLES
WITH 10 KILOWATTS OF POWER AND
A DIRECTIONAL ANTENNA NIGHTTIME

CONTENTS

Figure 1 is a map showing the 25- and 2.0-mv/m contours for a hypothetical Class II station located in the vicinity of Atascadero, California, on 830 kc with 10 kw of power directional nighttime.

Figure 2 is a map showing the 25- and 2.0-mv/m contours for a hypothetical Class II station located in the vicinity of Eureka, California, on 830 kc with 10 kw of power directional nighttime.

Figure 3 is a map showing the 25- and 2.0-mv/m contours for a hypothetical Class II station located in the vicinity of Redding, California, on 830 kc with 10 kw of power directional nighttime.

Figure 4 is a tabulation of the populations that would be served by the above hypothetical facilities.

Note: The dotted area represents the Type "B" Radio Service as shown on Exhibit 3 of the CCBS Comments dated August 15, 1958, in Docket No. 6741. The remaining area is "white" area.

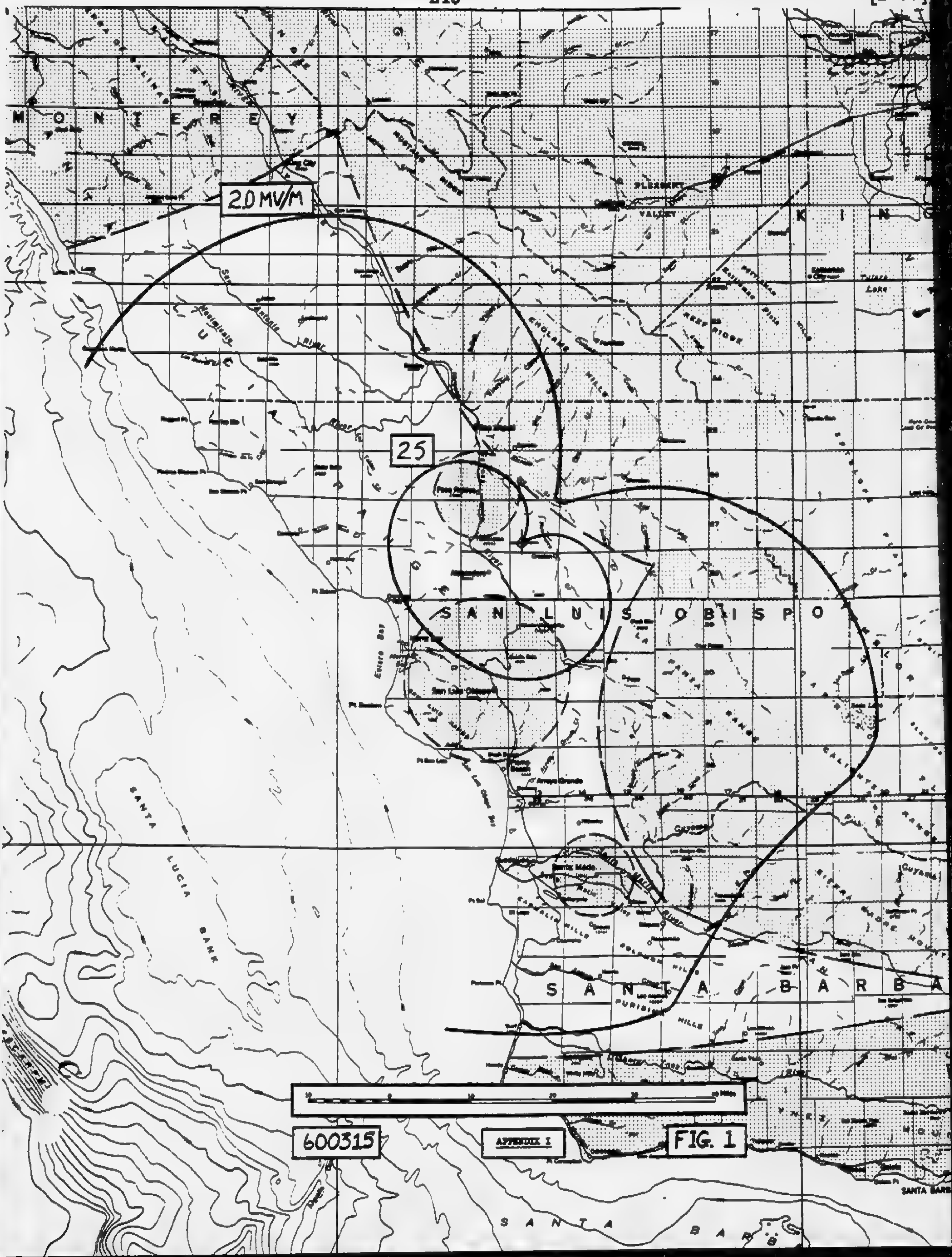
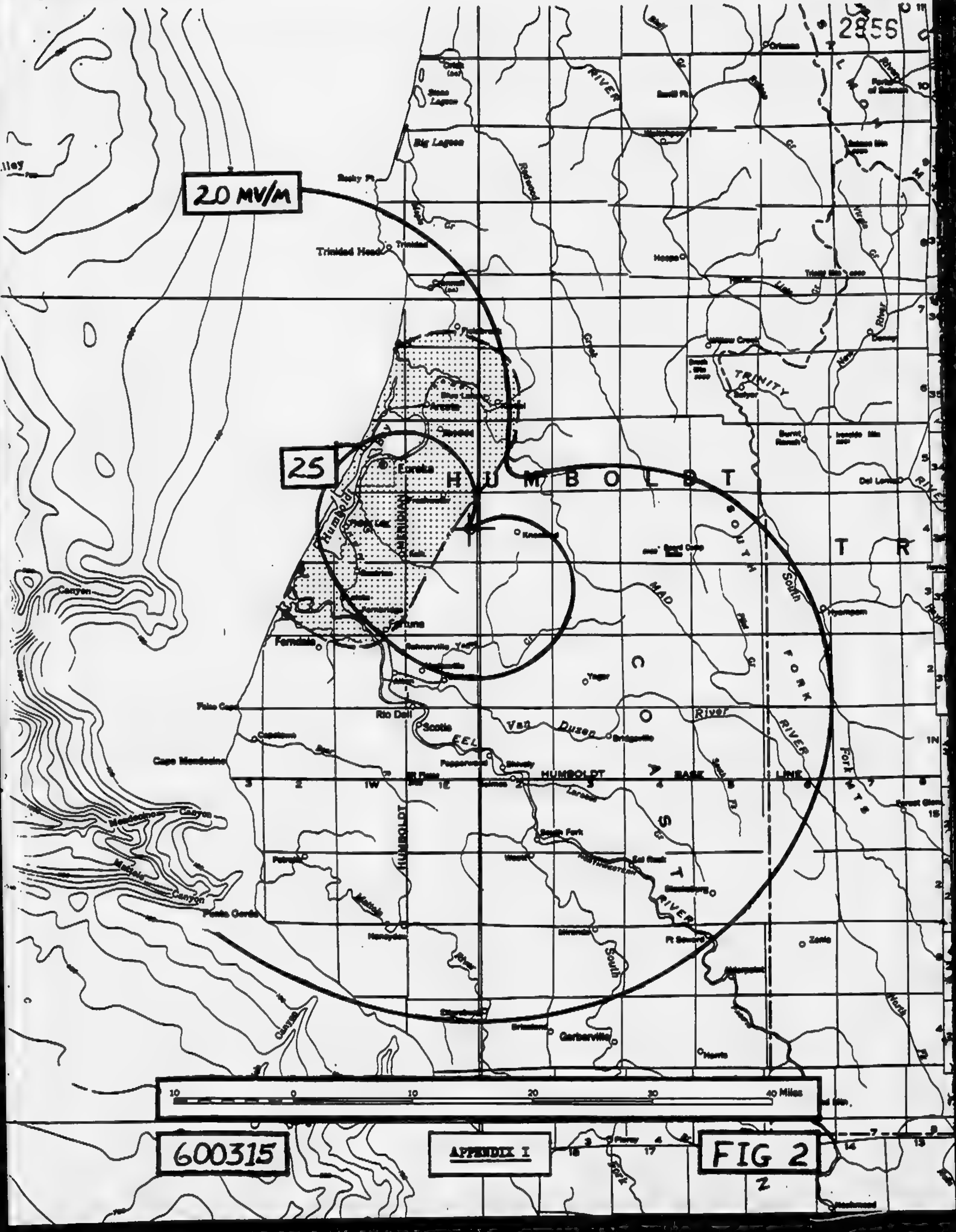

M O N T E R E Y
2.0 MV/M
K I N G
PLEASANT VALLEY
CHOLAME HILLS
25
S A N L U I S O B I S P O
Estero Bay
San Luis Obispo
Arroyo Grande
Santa Maria
SANTA LUCIA BANK
S A N T A B A R B A
CASMALIA HILLS
PURISIMA HILLS
S A N T A B A R B
0 10 20 30 40 Miles
600315
APPENDIX I

FIG. 1

2856

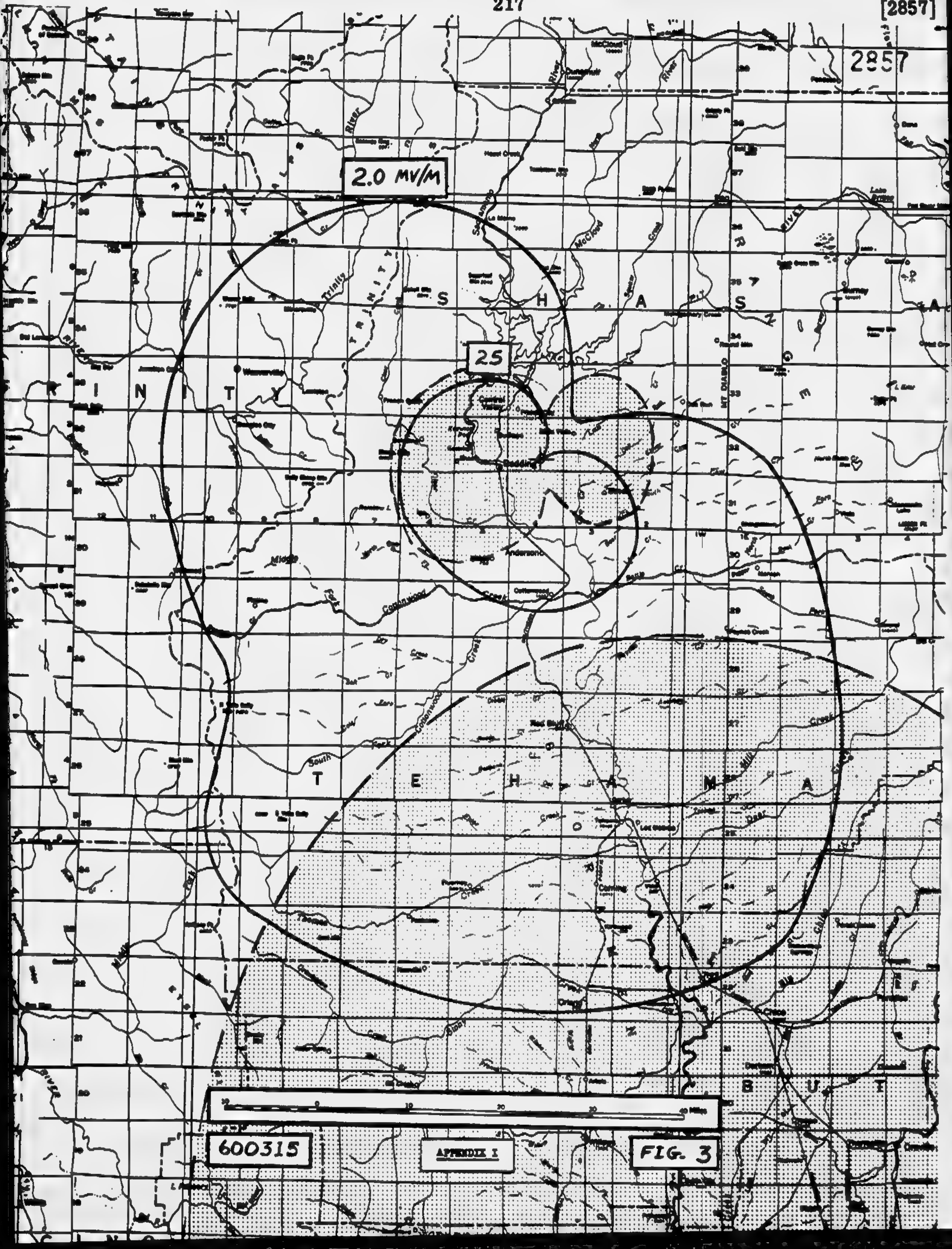

20 MV/M
25
Orleans
Weitchpec
Stone Lagoon
Big Lagoon
Rocky Pt.
Trinidad Head
Trinidad
Hoopa
Arcata
Eureka
Humboldt
MERIDIAN
Kneeland
Fortuna
Ferndale
Rio Dell
Scotia
Yager
Bridgeville
Van Duzen
Eel
River
Mad
Redwood
Creek
TRINITY
SOUTH
FORK
RIVER
H U M B O L D T
C O A S T
T R
False Cape
Capetown
Cape Mendocino
Canyon
Mendocino Canyon
Mattole Canyon
Punta Gorda
Petrolia
Honeydew
HUMBOLDT
HUMBOLDT BASE LINE
1W
1E
Weott
Miranda
South Fork
Ft Seward
Zenia
Garberville
Briceland
Hoaglin
10 0 10 20 30 40 Miles

600315

APPENDIX I

FIG 2

2857


2.0 MV/M
25
T R I N I T Y
S H A S T A
T E H A M A
B U T T E
Trinity
River
Sacramento
McCloud
Redding
Anderson
Cottonwood
Red Bluff
Corning
Chico
Cottonwood Creek
South Fork
MT DIABLO
10 0 10 20 30 40 Miles

600315

APPENDIX I

FIG. 3

PRELIMINARY POPULATION ANALYSIS OF AREAS SERVED IN ATASCADERO, EUREKA, OR REDDING, CALIFORNIA BY A CLASS II FACILITY ON 830 KILOCYCLES WITH 10 KILOWATTS OF POWER AND THE SAME DIRECTIONAL ANTENNA PATTERN

Location of Facility	Population in "White" Area	Total Population Enclosed
Atascadero, California	29,579	69,820
Eureka, California	15,620	42,272
Redding, California	12,237	53,845

APPENDIX I

FIGURE 4

RECEIVED

APR 1 1960

F. C. C.
OFFICE OF THE SECRETARY

SUPPLEMENTAL
ENGINEERING STATEMENT ON BEHALF OF
MIDWEST RADIO-TELEVISION, INC.,
RADIO STATION WCCO
MINNEAPOLIS, MINNESOTA

PREPARED BY THE FIRM OF
A. EARL CULLUM, JR.,
CONSULTING ENGINEERS
600315

SUPPLEMENTAL

ENGINEERING STATEMENT OF D. A. PETERSON OF THE FIRM OF A. EARL CULLUM, JR., CONSULTING ENGINEERS, IN CONNECTION WITH ENGINEERING STUDIES MADE FOR MIDWEST RADIO-TELEVISION, INC., LICENSEE OF RADIO STATION WCCO, MINNEAPOLIS, MINNESOTA

* * * * * * *

I, D. A. Peterson, am an engineer associated with the firm of A. Earl Cullum, Jr., Consulting Engineers, with offices located in Dallas, Texas. I received the Bachelor of Science Degree in Electrical Engineering from Southern Methodist University in 1934. I have been employed in an engineering capacity by broadcast stations since 1933. I have been a partner in the firm of A. Earl Cullum, Jr., since 1940. I have submitted reports of a technical nature to the Federal Communications Commission regularly, and I have appeared before the Federal Communications Commission as an expert engineering witness. I am a Senior Member of the Institute of Radio Engineers.

This firm has been employed by Midwest Radio-Television, Inc., to make studies and prepare engineering exhibits in response to the Federal Communications Commission Third Notice of Further Proposed Rule Making in Docket No. 6741 adopted September 18, 1959, and released September 22, 1959.

This is a supplemental statement to my engineering statement dated March 26, 1960, code 600315, which concerns studies of coverage and interference made in accordance with the standards prescribed in Exhibit 109 in Docket No. 6741. Figure 13 of that engineering statement is a horizontal radiation pattern for a hypothetical Class II station for operation on 830 kilocycles with 10 kilowatts of power and a directional antenna at Atascadero, California. Studies have now been made in accordance with the present standards of the Federal Communications Commission to show how the above mentioned Class II station would cause interference to the existing operation of WCCO on 830 kilocycles with 50 kilowatts of power and a nondirectional antenna during nighttime hours. These studies were made in accordance with Sections 3.182 and 3.183 of the present rules of the Commission.

ATTACHED FIGURE

The following attached figure was prepared under my supervision to show the results of the studies made:

14. Map showing the 0.5- , 0.4- , 0.3- , 0.2- , and 0.1-mv/m, 50% time skywave contours for the operation of WCCO with 50 kilowatts of power and a nondirectional antenna, as limited by a Class II station on 830 kilocycles at Atascadero, California.

The extent of the WCCO skywave service and the interference thereto would be as follows:

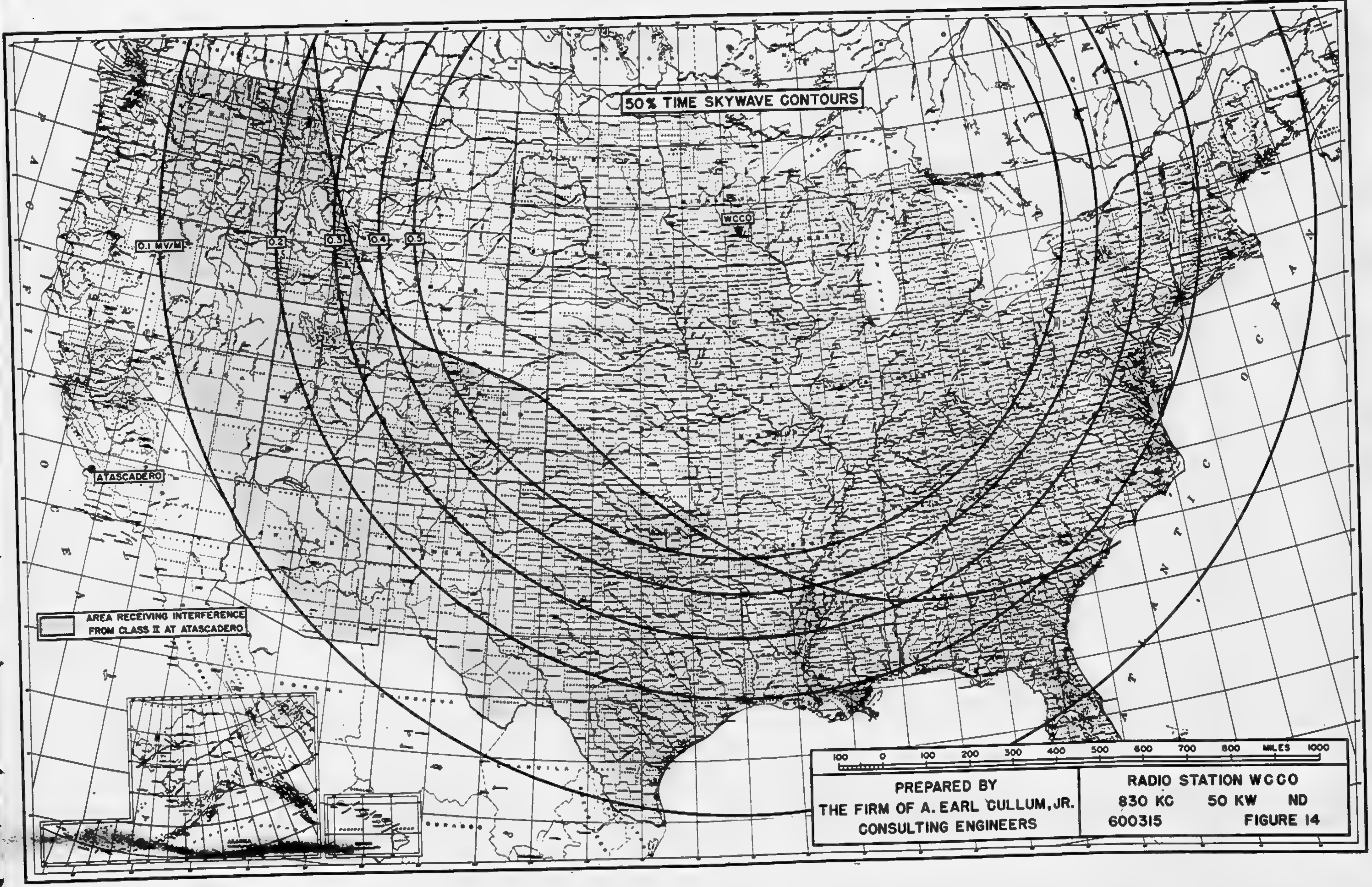
	Area Sq. Mi.	Percent
WCCO 0.5-mv/m, 50% skywave service*	876,670	100.0
Within WCCO 0.5-mv/m, 50% skywave service that would receive interference from the Class II station at Atascadero	86,742	9.9
WCCO 0.1-mv/m, 50% skywave service*	2,488,825	100.0
Within WCCO 0.1-mv/m, 50% skywave service that would receive interference from the Class II station at Atascadero	1,002,440	40.3

*Does not include the area within the WCCO 0.1-mv/m groundwave contour.

D A Peterson

Subscribed and sworn to before me
on this 28th day of March, 1960.
My Commission expires June 1, 1961.

Notary Public, Dallas County, Texas


50% TIME SKYWAVE CONTOURS
WCCO
0.1 MV/M
0.2
0.3
0.4
0.5
ATASCADERO
AREA RECEIVING INTERFERENCE FROM CLASS II AT ATASCADERO
100 0 100 200 300 400 500 600 700 800 MILES 1000
PREPARED BY
THE FIRM OF A. EARL CULLUM, JR.
CONSULTING ENGINEERS
RADIO STATION WCCO
830 KC 50 KW ND
600315 FIGURE 14

[2976]

[Received April 1, 1960 - FCC]

COMMENTS OF
WJR, THE GOODWILL STATION, INC.

1. WJR, The Goodwill Station, Inc., licensee of Class I-A station WJR, Detroit, Michigan (hereinafter referred to as WJR), by its attorneys, submits herewith its comments on the Commission's Third Notice of Further Proposed Rule Making released in the above-entitled matter on September 22, 1959. The Clear Channel Broadcasting Service (hereinafter referred to as CCBS), an informal organization of stations assigned to Class I-A frequencies of which WJR is a member, is filing comments simultaneously herewith. WJR subscribes fully to the CCBS comments which urge the Commission not to duplicate the Class I-A clear channel frequencies and to authorize higher power on said frequencies.

2. Table I of the Third Notice proposes a Class II assignment on 760 kc in the State of Idaho. WJR opposes such an assignment, as well as all of the other suggested duplications listed in Table I.

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3. However, in the event the Commission should conclude, contrary to the position of CCBS and WJR, that the clear channel frequencies should be duplicated as suggested in the Third Notice of Further Proposed Rule Making, WJR desires to direct the Commission's attention to the following matters and to urge the Commission to consider KGU, Honolulu, Hawaii, as the Class II assignment for 760 kc rather than the proposed Class II assignment in the State of Idaho.

4. The Class I-A frequency of 760 kc on which WJR is licensed to operate has already suffered substantial deterioration of service through the provisions of the North American Regional Broadcasting Agreement and the Agreement with the United Mexican States, both of

which agreements were ratified by the Senate of the United States on February 23, 1960 and signed by the President on March 10, 1960. NARBA authorizes the operation of station CMCD at Havana, Cuba, on 760 kc with 10 kw, unlimited time, utilizing a directional antenna, and the agreement with the United Mexican States authorizes the assignment of a station on 760 kc with 5 kw, unlimited time, utilizing a directional antenna, at Mexico City. 760 kc has also suffered further deterioration of service through the assignment of station KGU to 760 kc with power of 10 kw, unlimited time, non-directional, at Honolulu, Hawaii.

5. The Third Notice of Further Proposed Rule Making does not propose to make an additional Class II assignment on 660 kc

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on which WNBC, New York City, New York, operates as a Class I-A station because the operation of KFAR, Fairbanks, Alaska, on 660 kc is "deemed to meet the criteria of this Notice for purposes herein" (see paragraph 14 and Table I). If the Commission should consider any duplications, WJR respectfully submits that the operation of KGU in the State of Hawaii equally meets the criteria of the Third Notice. Furthermore, the State of Idaho would not be deprived of a Class II assignment in the event the proposal of a Class II assignment in Idaho on 760 kc were eliminated inasmuch as Table I of the Third Notice proposes a Class II assignment on 670 kc in the State of Idaho. WJR also respectfully directs the attention of the Commission to the following facts (see affidavit of A. Friedenthal hereto attached and made a part hereof):

a. The airline distance between stations WNBC, New York and KFAR, Fairbanks, Alaska is 3,599 miles and the airline distance between stations WJR, Detroit and KGU, Honolulu is 4,469 miles. Thus the distance between WJR and KGU is only 870 miles or 24% more than the distance between WNBC and KFAR.

b. The time zone differential between New York City and Fairbanks, Alaska and between Detroit and Honolulu is in both instances identically the same, namely five hours

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identically the same, namely five hours.

6. WHEREFORE, the premises considered, WJR respectfully suggests that the Commission issue a final report and order in the above-entitled proceeding retaining the present Class I-A clear channel frequencies without duplication at night and authorizing higher power on said frequencies as urged by CCBS, or in the event the Commission should conclude to provide additional Class II assignments on the Class I-A frequencies, to consider KGU, Honolulu, Hawaii, as the Class II assignment on 760 kc rather than the proposed Class II assignment in the State of Idaho.

Respectfully submitted,
WJR, THE GOODWILL STATION, INC.
By /s/ Reed T. Rollo
/s/ Percy H. Russell
/s/ R. Russell Eagan
of
Kirkland, Ellis, Hodson, Chaffetz & Masters

* * * *

April 1, 1960

Its Attorneys

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AFFIDAVIT

County of Wayne)
) SS:
State of Michigan)

A. FRIEDENTHAL having been first duly sworn on oath deposes and says as follows:

1. That he is Chief Engineer of WJR, The Goodwill Station, Inc.,

licensee of standard broadcast station WJR, Detroit Michigan, which is licensed to operate on 760 kc with power of 50 kw as a Class I-A station.

2. That his education and experience in the field of radio engineering are as follows: Graduate of U. S. Naval Radio School, San Diego, California, serving as radioman in the United States Navy for a term of four years. Attended night extension course in mathematics Highland Park High School, Highland Park, Michigan. Self educated by more than thirty years of practical experience in radio broadcasting.

3. That standard broadcast station KGU located in Honolulu, state of Hawaii, is licensed to operate non-directional on 760 kc with power of 10 kw unlimited time as a Class II station.

4. That the Commission in its Third Notice of Further Proposed Rule Making in Docket No. 6741 does not propose to assign an additional station to the frequency of 660 kc on which WNBC, New York City, New York, is authorized to operate as a Class I-A station because the operation of KFAR, Fairbanks, Alaska, as a Class II station is deemed to meet the criteria of the Third Notice.

5. That the airline distance between stations WNBC, New York, and KFAR, Fairbanks, Alaska, is 3599 miles and the airline distance between stations WJR, Detroit, and KGU, Honolulu, is 4469 miles.

6. That the time zone differential between New York and Fairbanks, Alaska, is five hours, and that the time zone differential between Detroit and Honolulu is likewise five hours.

/s/ A. Friedenthal

[JURAT dated March 22, 1960, and SEAL]

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[Rec'd. April 1, 1960 - F.C.C.]

COMMENTS OF MARIETTA BROADCASTING, INC. AND REQUEST FOR ISSUANCE OF ORDER TO SHOW CAUSE

Comes now Marietta Broadcasting, Inc., the licensee of Station KFMB, San Diego, California, by its attorneys, and in response to the Third Notice of Further Proposed Rule Making (FCC 59-972), released on September 22, 1959, as supplemented, respectfully submits its comments and supporting engineering data in Part III of the clear channel rule making proceeding, and requests that the Commission issue an order notifying Marietta Broadcasting, Inc., of the proposed modification of its license to specify operation on 760 kc or 830 kc as a Class II unlimited time assignment, or on another standard broadcast channel with comparable facilities, and directing Marietta Broadcasting, Inc., to show cause why such order of modification should not issue.

I. General Statement of Position

1. Marietta Broadcasting, Inc. (hereinafter sometimes called KFMB), is the licensee of Standard Broadcast Station KFMB, a Class II station which operates on the 540 kc channel with 5,000 watts of power, unlimited time, utilizing a directional antenna pattern at night only, at San Diego, California. The licensee filed an application (BP-12,721) more than one year ago to increase the daytime

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power of Station KFMB on 540 kc to 50,000 watts, with a non-directional antenna, but action upon the application has been withheld by the Commission because of the pendency of the Broadcasting Agreement with Mexico declaring 540 kc to be a Class I-A Mexican clear channel.

2. KFMB in general supports the broad purposes of the channel allocations proposed by the Third Notice in Part III of this rule making proceeding. It is believed that the plan proposed in the Third Notice will serve the public interest by affording an opportunity for additional broadcast service through the application of sound engineering principles in the proper utilization of clear channels in the standard broadcast band.

3. In addition, the plan for the assignment of new unlimited time stations on clear channels will further the public interest by making available an equitable solution to the assignment problem created by the ratification of the Broadcasting Agreement with Mexico of securing comparable broadcast facilities for Station KFMB upon its displacement from 540 kc. The present operation of KFMB on 540 kc is designed to protect the channel as a Canadian Class I-A clear channel. Operation of 540 kc at San Diego, however, will be absolutely precluded when the Broadcasting Agreement with Mexico enters into force, and it will become necessary to modify the existing authorization of KFMB to specify operation on another frequency under the procedures provided in Section 316 of the Communications Act of 1934, as amended. Although the Broadcasting Agreement authorizes an assignment at San Diego on 550 kc, this channel would be a completely inadequate substitute for KFMB's present operation on 540 kc, reducing daytime coverage from 18,342 square miles to 1,921 square miles and nighttime coverage from 884 square miles to 516 square miles.

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4. The Commission itself has recognized that this proceeding may be the proper vehicle for an equitable decision which will secure comparable facilities for KFMB upon its displacement from 540 kc by the Broadcasting Agreement with Mexico. In response to a request by Senator Morse's Subcommittee of the Committee on Foreign Relations of the United States Senate during a hearing on January 24, 1960, on the North American Regional Broadcasting Agreement

(Ex. A, 82d Cong., 1st sess.), and the Mexican Broadcasting Agreement (Ex. G, 85th Cong., 1st sess.), the Commission advised the Subcommittee as follows concerning the situation with respect to Station KFMB (Hearings, pages 429-432, at page 431):

> "During the period of time that station KFMB has been operating on the frequency of 540 kilocycles with 5,000 watts power, it has established an enlarged listening audience over its previous operation on 550 kilocycles with 1 kilowatt of power, and the Commission appreciates its desire to secure comparable facilities should this agreement become binding upon both nations. In this connection, however, it must be remembered that no licensee of any broadcast station has a property right in his assigned frequency (section 309 (d) (1), Communications Act of 1934, as amended, 47 U.S.C. 309 (d) (1)). While it is not possible at this time to say specifically what frequency may be available to station KFMB, there are several possibilities worthy of investigation. It is entirely possible that KFMB may obtain a frequency on one of the U.S. I-A channels as a result of a presently pending proceeding concerning the usage of clear channels (clear channel hearing, docket 6741). The Commission wishes to assure the committee that action affecting KFMB will not be hasty and that serious consideration will be given to any solution of this assignment problem in an effort to reach a decision that is equitable. While the Commission cannot prejudge its action, it seems only fair to say that one of the factors to which the Commission will give consideration is the displacement of KFMB brought about by the terms of this agreement." (Emphasis added.)

5. In this context, KFMB has caused engineering studies to be made of the availability of clear channels under the plan of the Third Notice which may permit an adequate substitution of frequencies to provide service comparable

to Station KFMB's present operation on 540 kc. As indicated in the attached engineering statement, the plan to assign unlimited time Class II stations on selected clear channels offers alternate solutions to the KFMB problem which at the same time meet the criteria of the Third Notice, with some minor modifications in detail or the waiver of applicable Rules of the Commission where required:

a. The 760 kc channel, which the Third Notice makes available for assignment in Idaho, could be readily used in California, with a substitute channel provided for Idaho to satisfy the criteria of the Third Notice, and would provide nighttime service to some existing Type B white area. A waiver of the requirements of Section 3.37 of the Commission's Rules for daytime operation would be required, but would be justifiable.

b. The 830 kc channel, which the Third Notice contemplates as available for assignment in California, offers facilities which would be acceptable to KFMB as a substitute for its present assignment.

The Broadcasting Agreement with Mexico has now been ratified by the United States Senate. In order to permit the early implementation of its provisions, and to secure substitute facilities for KFMB on an equitable basis, it becomes appropriate to invoke at this time the procedures of Section 316 of the Communications Act of 1934, as amended. Pursuant thereto, KFMB respectfully requests that the Commission issue an order notifying Marietta Broadcasting, Inc., of the proposed modification of its license to specify operation on 760 kc or 830 kc as a Class II unlimited time assignment, or on another standard broadcast channel with comparable facilities, effective upon the entry into force of the Broadcasting Agreement with Mexico or within a reasonable time after this proceeding is concluded, and that the Commission direct the licensee to show cause why such order of modification should not issue.

II. The Commission's Assignment of KFMB to 540 kc, in the Belief that Its Validity Could be Upheld, Has Enabled KFMB to Establish a Responsible Broadcast Service to Meet the Needs of Its Audience Over a Broad Area of Southern California

6. In the International Telecommunications Convention at Atlantic City in 1947, the contracting nations had agreed in a footnote to Article 47 of the annexed Radio Regulations that the allocation of 540 kc to the broadcast band was to become effective January 1, 1949, in accordance with special arrangements to be agreed upon by interested countries. Thereafter, the United States recognized the priority of Canada to 540 kc as a Class I-A Canadian clear channel in the North American Regional Broadcasting Agreement (NARBA) of 1950.

7. There was in existence no arrangement or agreement with Mexico, however, provided by the 1947 Convention, when the Government of Mexico in 1948, sought to establish a "Sooner" claim to the 540 kc channel by authorizing the operation of Station XEWA at San Luis, Potosi, Mexico, on 540 kc with a power of 150,000 watts, unlimited time, utilizing a directional antenna system at night, as a Mexican Class I-A station. In order to protect the rights of the United States in the frequency, an objection was lodged to the premature assignment, recognition of the Mexican classification was refused, and the Commission invited applicants in the United States to make effective use of the channel. KFMB successfully made application (BP-8716) for a construction permit to change its assigned frequency from 550 kc to 540 kc, and to increase its power from 1,000 watts to 5,000 watts. On June 27, 1956, following a hearing

(Docket No. 11552), the Commission granted KFMB's application to modify its license from directional antenna day and night to directional antenna at night only.

8. At the time that KFMB's application to change its frequency to 540 kc was granted, it was of course known that a dispute existed with Mexico concerning its proper use. However, the Commission by letter dated December 23, 1953, observed that it had protested that the authorization for the operation of XEWA was premature, and it notified KFMB that it believed that the validity of the KFMB assignment could be upheld:

> "This has reference to your application (File No. BP-8716) for a construction permit to change the frequency of station KFMB to 540 kilocycles and to increase power to five kilowatts which was granted by the Commission December 17, 1953.
>
> "In connection with the above-mentioned grant it is necessary, however, to call to your attention the fact that the Mexican Government in accordance with international procedures has notified a station, XEWA, San Luis, Potosi, S.L.P. operating on 540 kilocycles with a power of 150 kilowatts, unlimited time, utilizing a directional antenna system at night as a Class I-A station. *In May, 1948, the United States Government objected to the premature assignment of the station and has not recognized its classification as a I-A station.*
>
> "Under existing agreements, the grant of your application will now be notified to the Office of Inter-American Radio for transmission to other countries of the North American region. It is probable that the Mexican Government will protest the KFMB assignment. *The Commission, however, is cognizant of this possibility and believes that the validity of the KFMB assignment can be upheld.*" (Emphasis added).

9. In order to effect a broadcasting agreement with Mexico, however, and to secure other concessions deemed desirable, the representatives negotiating on behalf of the United States found it necessary to sacrifice the claim

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of the United States to the validity of the KFMB assignment, and to recognize 540 kc as a Mexican Class I-A clear channel (the recognition of 540 kc as a Canadian Class I-A clear channel in NARBA was not affected). Following a tentative agreement in December, 1954, there was formally signed at Mexico City on January 29, 1957, the Agreement between the United States of America and the United Mexican States Concerning Radio Broadcasting in the Standard Broadcast Band (Ex. G, 85th Cong., 1st sess.), which provides in Annex I, Paragraph B 1 b (3) as follows:

> "(3) 540 kc/s-Assignments in the United States of America on this frequency:
>
> "(a) shall not be located outside the area; bounded on the north by the parallel 35°N and on the east by the meridian 93°W; provided that no such assignments may be made within the United States of America south of the parallel 30°N, and
>
> "(b) shall not place a signal intensity at any point within the United Mexican States in excess of 50 uV/m nighttime and 10 uV/m daytime."

10. These provisions would absolutely preclude the operation of KFMB on 540 kc. In hearings before the Subcommittee of the Committee on Foreign Relations of the United States Senate considering NARBA and the Broadcasting Agreement with Mexico, a spokesman for Station KFMB supported the ratification of both Agreements "as necessary to provide stability and protection from interference for all stations" (page 384), but requested that a reservation be attached to protect KFMB's operation on 540 kc (page 386), or else, "in a spirit of flexibility, reasonableness, and compromise, . . . that the subcommittee seek some assurance from the Federal Communications Commission

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that due consideration will be given by the Commission to providing reasonably comparable facilities to station KFMB, as a fair substitute for the facilities which it would be required to surrender under the agreement." (page 387). As quoted in paragraph 4 of these comments, supra, in a supplementary statement to the Subcommittee, the Commission responded that it would give serious consideration to any solution in an effort to reach an equitable decision, and would consider as a factor the displacement of KFMB brought about by the terms of the Agreement with Mexico (page 431). The Commission also said that "we can assure the committee that we believe an equitable and acceptable solution can be found." (page 432).

11. The United States Senate has now given its advice and consent to the ratification of the Broadcasting Agreement with Mexico as well as NARBA, on February 23, 1960, so that upon ratification of the former Agreement by the Government of Mexico it will have the effect of a treaty. It is true that Annex V of the Broadcasting Agreement with Mexico provides for the operation of a Class III station on 550 kc at San Diego with 5,000 watts of power, utilizing a directional antenna, unlimited time, with footnote k to the assignment providing that protection requirements for other stations are to be based on previous operation on 550 kc. However, 550 kc would constitute a grossly inadequate, unreasonable, and inequitable "substitute" for the present operation of KFMB on 540 kc. As set forth on page 5 of the attached engineering statement of KFMB's consulting radio engineer, Robert L. Hammett, in order to operate within the limits contemplated by the Agreement on 550 kc, KFMB

would be required to suppress radiation to the north and to the east to low values, both day and night, equivalent to its former operation with 1,000 watts of power on 550 kc; the greater radiation could go only toward Mexico, 18 miles to the south, and toward the Pacific Ocean, 10 miles to the west. Accordingly, the actual service rendered would not be significantly greater than that of KFMB's former operation on 550 kc with a directional antenna day and night.

12. As the Commission has itself acknowledged in its supplementary statement to the Senate Subcommittee, "During the period of time that station KFMB has been operating on the frequency of 540 kilocycles with 5,000 watts power, it has established an enlarged listening audience over its previous operation on 550 kilocycles with 1 kilowatt of power, and the Commission appreciates its desire to secure comparable facilities should this agreement become binding upon both nations." (page 431). The Agreement does not of course require that KFMB change its frequency to 550 kc, but only makes the channel available in San Diego. The supplementary statement of the Commission to the subcommittee can only be interpreted as an implicit recognition that 550 kc does not meet the test of "an equitable and acceptable solution."

13. KFMB presently serves a broad expanse of Southern California over an area of 18,342 square miles daytime, 884 square miles nighttime, including areas where few other primary services are available. The pending application to increase daytime power on 540 kc to 50,000 watts would increase its interference-free contour service in the daytime to 37,841 square miles. This may be compared to a coverage of 1,921 square miles daytime and 516 square miles nighttime on 550 kc.

14. In terms of population, during daytime hours utilizing a non-directional antenna, KFMB renders service on 540 kc to a total of 1,773,468 persons (1950 Census), including residents of areas where few other primary services are available. This does not include the population of the Los Angeles area (1950 Census city population 1,970,358; 1950 Census urbanized area population 3,996,946), although KFMB places a signal of 2.0 mv/m or greater over all, or a

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12. As the Commission has itself acknowledged in its supplementary statement to the Senate Subcommittee, "During the period of time that station KFMB has been operating on the frequency of 540 kilocycles with 5,000 watts power, it has established an enlarged listening audience over its previous operation on 550 kilocycles with 1 kilowatt of power, and the Commission appreciates its desire to secure comparable facilities should this agreement become binding upon both nations." (page 431). The Agreement does not of course require that KFMB change its frequency to 550 kc, but only makes the channel available in San Diego. The supplementary statement of the Commission to the subcommittee can only be interpreted as an implicit recognition that 550 kc does not meet the test of "an equitable and acceptable solution."

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very substantial portion of, the city and the urbanized area contiguous thereto. See Wrather-Alvarez Broadcasting, Inc., 13 Pike & Fischer Radio Reg. 1284, 1287 fn. 5 (1956). Estimating that the population of Southern California has increased in population approximately 50% since 1950, KFMB now services approximately 2,500,000 people exclusive of the Los Angeles area. No interference is received or caused to other stations except for very minor adjacent-channel interference with Station KAFY along the coast of California near Santa Barbara. The KFMB service area blankets the entire region of Southern California south of the Tehachapi Mountains, including the Imperial Valley-Salton Sea area. KFMB thus ranks in wide-area coverage with stations such as KFI, KNX, and KBIG. The pending application to increase daytime power on 540 kc to 50,000 watts would increase the audience in the interference-free service contour to 5,509,700 persons (1950 Census), not including Los Angeles.

15. During nighttime hours, KFMB presently operates with a directional antenna to protect Station CBK at Watrous, Saskatchewan, Canada, which operates on 540 kc with a power of 50,000 watts, non-directional, unlimited time, in accordance with the provisions of NARBA. During these hours, 488,602 persons (1950 Census) reside within the interference-free contour of KFMB. The interference received from co-channel stations is quite low, resulting in an RSS limitation of 3.65 mv/m.

16. Unless an adequate substitute is found for KFMB's present operation on 540 kc, not only will KFMB lose a substantial portion of its coverage, but a considerable segment of the population of Southern California will also lose a responsible broadcast service meeting the needs of the entire area. The broadcast record of Station KFMB in discharging its public service responsibilities and its position in the area and with the industry is too well know, it is believed, to

require that it be here labored. KFMB's reputation for conscientious public service responsive to the needs of its wide audience is based upon a program fare of well-balanced, mature, "in depth" broadcasting. Substantial amounts of agricultural, business, educational, instructive, and informative program material which it regularly broadcasts range from reports on developments in the State and National capitals, through information on business and agricultural conditions, to features of primary interest to the housewife and the parent, programs designed to serve not only KFMB's principal city but all of the inhabitants of the region which it serves. As a result, a recent survey has shown that with the exception of the Los Angeles stations, KFMB is the most listened-to station in the San Diego area and the three surrounding counties, a service area extending 180 miles from San Diego or nearly all of Southern California south and east of Los Angeles.

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III. The Plan for New Class II Unlimited Time Assignments On Clear Channels Appears to Offer the Only Available "Equitable and Acceptable Solution" for the Displacement of KFMB from Operation on 540 kc.

17. The Broadcasting Agreement with Mexico will become effective upon its ratification by the Government of Mexico, thereby making it necessary to institute proceedings under Section 316 of the Communications Act of 1934, as amended, to modify the license of KFMB to specify operation on another frequency. Section 316 provides as follows:

> "(a) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act or of any treaty ratified by the United States will be more fully complied with. No such order of modification shall become

final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall have been given reasonable opportunity, in no event less than thirty days, to show cause by public hearing, if requested, why such order of modification should not issue: Provided, That where safety of life or property is involved, the Commission may by order provide for a shorter period of notice.

"(b) In any case where a hearing is conducted pursuant to the provisions of this section, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission."

18. The hearing requirements of Section 316(a) of the Act, which was derived from former Section 312(b), "by their terms, apply to modifications resulting from a treaty . . ." American Broadcasting Co. v. Federal Communications Commission (KOB case), 89 U.S. App. D.C. 298, 191 F.2d 492, 499 (1951); cf. Federal Communications Commission v. National Broadcasting

Co. (KOA), 319 U.S. 239, 245-246, 63 S.Ct. 1035, 87 L.Ed. 1374 (1943). A show cause hearing, if requested by the respondent, would be designed to determine not only that the license must be modified under the terms of the Agreement, but also how it must be modified, i.e., what channel substitution is best calculated to provide an "equitable and acceptable solution," in the language of the Commission to the Senate Subcommittee (Hearings, page 432). As pointed out by Senator Morse, Chairman of the Subcommittee, with respect to the treaty arrangements, "it raises the question as to whether or not, if we deliberately proceed to negotiate a treaty with some foreign power that is going to result in considerable financial loss to our own citizens, but we believe the treaty is justified because the total good to the country as a whole justifies it, nevertheless do we not have some duty to weigh the effect of the treaty on the property holdings on our own citizens, to the end that if we impose this settlement upon them when they, in no way, are responsible for the settlement, are they not entitled to some compensatory relief." (Hearings, page 389).

19. Although a licensee of a broadcast station of course has no property right in his assigned frequency, nevertheless he does have an authorization or franchise valuable not only to him but also to the public which he serves. If for the best interests of the United States and the common good of broadcasters in general, this assigned frequency must be sacrificed, then in effect there has been a taking of a valuable interest for a public use or purpose, and there must be just and reasonable compensation awarded through the substitution of comparable facilities to make the licensee whole. Clearly, as demonstrated, 550 kc is a completely inadequate and unacceptable substitute. Similarly, there are no other frequencies available, outside of the clear channel reservations, to provide adequate substitute service. The growth of radio broadcasting in Southern California during the last decade has been so rapid that very few broadcast channels remain available to a new applicant. Local channels provide only unduly restricted service, and the regional channels offer no possibility of daytime coverage equivalent to KFMB's present operation.

20. However, the plan of the Third Notice of assigning new unlimited time stations to certain designated clear channels does appear to offer an "equitable and acceptable solution" to the problem of securing comparable facilities to compensate KFMB and its audience for the loss of 540 kc. As the Commission stated to the Subcommittee (page 431), "It is entirely possible that KFMB may obtain a frequency on one of the U.S. I-A channels as a result of a

presently pending proceeding concerning the usage of clear channels (clear channel hearing, docket 6741)." In light of the Commission's declaration, the attached engineering statement by Mr. Robert L. Hammett, KFMB's consulting radio engineer, whose qualifications are a matter of record with the Commission, discussing the feasibility of substituting 760 kc or 830 kc as a Class II unlimited time assignment for the 540 kc channel presently assigned to KFMB and the inadequacy of the 550 kc channel as a possible substitute for KFMB's present operation on 540 kc, is particularly significant.

21. The engineering statement of Mr. Hammett demonstrates that the 760 kc channel, which the Third Notice would make available for assignment in

Idaho, can be readily used in California and a substitute channel assigned to Idaho. There would be no conflict with the allocation of the 750 kc channel in Arizona to serve large "white areas" in that state. With 50,000 watts of power, using a directional antenna during transitional and nighttime hours, Station KFMB during daytime operation on 760 kc would provide a substantial degree of groundwave service to sparsely populated areas north and east of San Diego, although its coverage would be less than that possible on 540 kc. Using a directional antenna, KFMB would provide nighttime groundwave service to some existing Type B white area as far as 30 miles east of San Diego. Since there would be an unavoidable overlap of 2 mv/m and 25 mv/m contours of KFMB on 760 kc with KBIG on 740 kc, it would be necessary to waive the requirements of Section 3.37 of the Commission's Rules for the period of daytime operation, but such waiver would clearly serve the public interest.

22. Likewise acceptable as a substitute for KFMB's present operation on 540 kc would be the assignment to KFMB of 830 kc as a Class II unlimited time channel (it is pertinent to observe that the reservation of 830 kc for KFMB would be consonant with the proposal

of the Third Notice to assign the channel to California). The coverage to be obtained by KFMB with operation on 830 kc is shown in the attached engineering statement.

IV. Conclusion: The Commission Should Issue a Show Cause Order Looking to the Modification of KFMB's License to Specify Operation on 760 kc or 830 kc, or a Channel with Comparable Facilities

23. Accordingly, as demonstrated, the reservation of the 760 kc or the

830 kc channel as a substitute for KFMB's present operation appears to offer the "equitable and acceptable solution" contemplated by the Commission for the displacement of KFMB from 540 kc operation under the terms of the Broadcasting Agreement with Mexico. Comparable facilities may thereby be provided to compensate KFMB and its audience for the loss of a broadcast service surrendered by the United States as necessary to secure the other benefits of the treaty, and at the same time, the criteria of the Third Notice can be met.

24. In order to permit the early implementation of the Broadcasting Agreement with Mexico, it is requested that the Report and Order to be issued by the Commission in this proceeding include an Order, pursuant to the provisions of Section 316 of the Communications Act of 1934, as amended, notifying Marietta Broadcasting, Inc., of the proposed modification of its license to specify operation on 760 kc or 830 kc as a Class II unlimited time assignment (or on another standard broadcast channel with comparable facilities if these frequencies are unavailable), effective upon the entry into force of the Broadcasting Agreement with Mexico or within a reasonable time after this proceeding is concluded, and that Marietta Broadcasting, Inc., be directed to show cause why such order of modification should not

issue. The 550 kc channel will of course be available as a Class III channel at San Diego for application by interested parties upon the assignment of an equitable and adequate substitute channel to KFMB. The assignment of 760 kc or 830 kc or a comparable frequency to KFMB would serve the public interest in

[3168]

providing for the efficient use of a broadcast facility; in obviating the necessity for a long and arduous hearing; and in meeting requirements of basic fairness to KFMB and for its audience.

Respectfully submitted,

MARIETTA BROADCASTING, INC.

By /s/ Vincent B. Welch

WELCH, MOTT & MORGAN
Its Attorneys

* * *

MARIETTA BROADCASTING, INC.

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

COMMENTS ON CLEAR CHANNEL RULEMAKING PROPOSAL
DOCKET NO. 6741

Hammett & Edison
Consulting Radio Engineers
600318

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

ENGINEERING STATEMENT OF ROBERT L. HAMMETT, CONSULTING RADIO ENGINEER

The firm of Hammett & Edison, Consulting Radio Engineers, has been retained by Marietta Broadcasting, Inc., licensee of Station KFMB, San Diego, California, to make engineering studies of the Third Notice of Further Proposed Rulemaking of the Federal Communications Commission, released September 22, 1959, in Docket No. 6741. This firm has also been retained to prepare supporting data for comments being filed by Marietta Broadcasting, Inc., to the above rulemaking proposal concerning Clear Channel broadcasting in the standard broadcast band.

OPERATION OF STATION KFMB

The primary interest of Marietta Broadcasting, Inc., in the reallocation of Clear Channels is related to the necessity for changing the operating frequency of Station KFMB in San Diego. KFMB now operates as a Class II station on the 540 kc channel with 5,000 watts of power, non-directional daytime, directional nighttime. The 540 kc channel was designated by the 1950 North American Regional Broadcasting Agreement as a Canadian Class I-A Clear channel. KFMB is licensed to operate on this channel, while providing nighttime protection to the Canadian border, pursuant to the Agreement. Operating in this manner on the 540 kc channel, KFMB provides extensive daytime and nighttime service to the southwestern corner of the United States.

Marietta Broadcasting, Inc., has pending before the Federal Communications Commission an application to increase the daytime power of Station KFMB to 50,000 watts, with non-directional antenna, while operating on the 540 kc channel, File No. BP-12721. This operation would provide extensive daytime groundwave service and would reach a large area now poorly served by other stations.

As a result of negotiations between the United States and Mexico, subsequent to the NARBA Agreement, a bi-lateral agreement was reached with Mexico on January 29, 1957, under which the use of the 540 kc channel by Mexico for a Class I-A station was recognized. This agreement requires that KFMB discontinue its present licensed operation on the 540 kc channel. Exhaustive studies have been made, on behalf of Marietta Broadcasting, Inc., of all possible alternate allocations for Station KFMB which would preserve the extensive service now being rendered and which would not prevent the improvement of service which KFMB proposes to provide on 540 kc to the southwestern portion of the United States. Figure 1A, attached hereto, shows the existing service by Station KFMB. Figure 1B shows the daytime service which would be provided by Station KFMB with the 50 kilowatt operation for which application is now pending. Much of the service provided by KFMB occurs in areas having few other primary services available.

COMMENTS ON FCC RULEMAKING PROPOSAL

Marietta Broadcasting, Inc., favors the broad purposes of the reallocation proposed by the Third Notice. The additional service which can be made available by the use of sound engineering principles in sharing the Clear Channels is believed to be in the public interest. Sharing a Clear Channel also offers the only possibility which we now see for solution of the serious problem which has been created by the Mexican Agreement forcing KFMB to abandon the 540 kc channel.

In response to the invitation of the Second Supplement to the Third Notice of Further Proposed Rulemaking, dated February 17, 1960, studies have been made of possible standards for limitation of nighttime co-channel interference to Class I-A stations. The attached figures show allocation conditions computed on each of the two bases for nighttime standards of protection specifically mentioned in the Second Supplement.

It is our view that the Commission should adopt engineering standards for the limitation of nighttime co-channel interference to Class I-A stations and that such rules should be based on the best available current engineering data. We would favor rules that preserve all existing and actually usable secondary service of Class I-A stations.

It is noted that rules which would protect existing Type "E" or Type "F" service, as defined in Exhibit 109 of this proceeding, would permit substantially greater radiation from an unlimited time operation in San Diego toward Class I service areas than would the present Rules for nighttime protection of Class I-B stations. This stems largely from the recognition of Exhibit 109 that secondary service areas are limited in different degrees by atmospheric noise in different portions of the country. When compared with the present Rules, the somewhat greater complexity in applying the procedures of Exhibit 109 would seem to be more than offset by the more realistic evaluation of interference and the resulting greater new service obtainable by channel sharing.

The Third Notice proposed to make available the 830 kc channel for Class II assignment in the State of California and the 1120 kc channel for assignment in either California or Oregon. Studies which we have made show that the 1120 kc channel would not be satisfactory for operation in San Diego but that the 830 kc channel does offer a solution of the KFMB 540 kc problem. Technical details on the use of the 830 kc channel are provided herewith.

In response to the Further Notice of Proposed Rulemaking of the Federal Communications Commission, dated April 25, 1958, in Docket No. 6741, Station KFMB submitted comments which were supported by my engineering statement dated August 12, 1958. It was shown therein that the 760 kc channel could be employed by Station KFMB to solve the problem which would arise if Station KFMB should be forced to abandon the 540 kc channel. It was also shown how various other Clear channels could similarly be used but that the 760 kc channel was to be preferred for various reasons. A further discussion of the use of the 760 kc channel, along with less desirable alternatives, is included herewith.

Nighttime operation by KFMB on any of the Clear Channels would require a directional antenna system. Simple directional antenna systems have been designed for each channel to provide the protection shown on attached figures for the co-channel Class I-A stations involved. None of the antenna designs require a large number of towers or stringent tolerances on the maintenance of current ratio or phase.

All showings of coverage contained herein are based on the soil conductivities shown by FCC Figure M-3 and use of the equivalent distance method where radio paths involve more than one value of conductivity.

760 KC CHANNEL

The Third Notice of Further Proposed Rulemaking in Docket No. 6741 proposed to make the 760 kc channel available for Class II assignment in the State of Idaho. Studies which I have made show that this channel could readily be used instead in California and that the allocation could be modified to provide a substitute channel to Idaho. Specifically, it has been determined that the following alternate allocation could readily be made:

Channel	Third Notice	Alternate Allocation
760 kc	Idaho	California
830 kc	California	California-Oregon
1120 kc	California-Oregon	Oregon
870 kc	Oregon	Idaho

From the studies which I have made, it has been determined that the alternate allocation would meet all the criteria of Paragraph 15 of the Third Notice with the single exception that the 760 kc allocation to California would be adjacent to the 750 kc allocation to Arizona. This exception is believed to be of no consequence in the specific case where KFMB would use the 760 kc channel at the western edge of California. Large "white areas" exist in Arizona which could be served by the 750 kc channel with no problem of adjacent channel interference.

The 760 kc channel could be employed by Station KFMB with 50,000 watts of power using a directional antenna during transitional and nighttime hours. The directional antenna would be designed to protect the existing secondary service area of Station WJR in accordance with the Rules of the Federal Communications Commission. Figure 2A, attached, shows the daytime and nighttime coverage which would be obtained on the 760 kc channel. Although the daytime coverage would not be so extensive as that possible on the 540 kc channel, a substantial degree of groundwave service would be possible in sparsely populated areas north and east of San Diego. Figure 2B, attached, shows the nighttime allocation conditions on the 760 kc channel as projected in accordance with the present Rules of the FCC. Studies made in accordance with the Commission's Exhibit 109 of the Clear Channel hearing show that the nighttime service area of WJR is limited by atmospheric noise to a distance of approximately 500 miles west from Detroit. These studies also show that complete protection of this existing WJR secondary service can be obtained with a directional antenna at KFMB radiating as much as 275 mv/m at one mile toward Detroit. Such an installation by KFMB would provide nighttime groundwave service to areas as far as 30 miles east of San Diego and would therefore cover some existing Type B white area.

It is noted that Station KBIG is licensed to operate on the 740 kc channel with 10,000 watts of power, daytime only, from Avalon, California. As shown by Figure 2A, there would be a very small area of interference created to a 760 kc operation of KFMB in the vicinity of the KBIG transmitter on Catalina Island. A similar very small area of interference would be created to the existing service of KBIG around the KFMB transmitter. These interference areas are believed to be entirely negligible There would be unavoidable overlap of the KBIG 2 mv/m contour and the KFMB 25 mv/m contour, and vice versa. The assignment of 760 kc to KFMB would, therefore, require a waiver of the requirements of Section 3.37 of the FCC Rules during daytime hours only. In the special circumstances which exist here, with KFMB being forced to abandon the 540 kc channel, such a waiver appears to be in the public interest and would be acceptable to Marietta Broadcasting, Inc.

830 KC CHANNEL

The Third Notice proposed to make the 830 kc channel available for assignment to a Class II station in California. From the studies which we have made, it has been determined that this channel would be an acceptable alternate to the 760 kc channel as a substitute for the 540 kc channel now used by Station KFMB. Figure 3A, attached, shows the daytime and nighttime groundwave coverage which would be obtained by Station KFMB operating with 50,000 watts of power on the 830 kc channel with directional antenna during transitional and nighttime hours. Figure 3B shows the nighttime allocation conditions on the 830 kc channel as calculated in accordance with the Federal Communications Commission Rules, assuming that a directional antenna would be employed during nighttime hours by Station KFMB to protect the existing secondary service area of Station WCCO, Minneapolis. Figure 3C shows the nighttime secondary coverage of WCCO as calculated in accordance with the Commission's Exhibit 109 and also shows the Type B groundwave service which would be provided by KFMB.

COMPARISON OF ALTERNATIVES

The attached maps have been prepared to illustrate the service which can be rendered by each of the several channels considered for Station KFMB. The comparative coverages are as follows:

Figure	Operation	Area Served Daytime	Area Served Nighttime
1A	Existing 540 kc, 5 kw, DA-N	18,342 sq. mi.	884 sq. mi.
1B	Proposed 540 kc, 5 kw, 50 kw - LS, DA-N, BP-12,721	37,841	884
2A	Alternate 760 kc, 50 kw, DA-N	31,923	10,968
3A	Alternate 830 kc, 50 kw, DA-N	23,488	1,803
4	Class III, 550 kc, 1 kw, DA-N	1,921	516

INADEQUACY OF 550 KC CHANNEL

The 1957 Agreement between the United States and Mexico contemplates the operation of Station KFMB on the 550 kc channel with 5 kilowatts of power and a directional antenna. The Agreement states, "Protection requirements for other stations to be based on previous operation on 550 kc's." The previous operation was 1 kw, DA-1. To operate within these limits, KFMB would be required to suppress radiation to the north and to the east to the low values formerly existing with the 1 kw operation. These limitations would exist both daytime and nighttime. Only in the directions south and west could greater radiation be directed with 5 kw of power. To the south, at a distance of only 18 miles, is the Mexican border and to the west, at a distance of only 10 miles, is the Pacific Ocean. Therefore, even though the Mexican Agreement specifies 5 kw operation on 550 kc for KFMB, the actual service which could be rendered would not be significantly greater than that given with 1 kw on 550 kc with a directional antenna day and night prior to the change to 5 kw on 540 kc six years ago. A map, Figure 4, has been prepared to show the limited extent of the service which could be given on the 550 kc channel. From the several coverage maps and the above tabulation of area served, it is apparent that the 550 kc channel is not an adequate or even a reasonable substitute for the 540 kc channel for the operation of Station KFMB.

CONCLUSIONS

As a result of the studies made, it is concluded that it would be in the public interest to adopt the subject rule making proposal of the Federal Communications Commission with appropriate modification to make possible a solution of the problem which has been created due to KFMB being forced to vacate the 540 kc channel.

HAMMETT & EDISON
Consulting Radio Engineers

Robert L. Hammett

March 28, 1960

AFFIDAVIT

State of California)
) ss:
County of San Mateo)

Robert L. Hammett, being first duly sworn upon oath, deposes and says:

1. That he is a qualified engineer and a partner in the firm of Hammett & Edison, Consulting Radio Engineers, with offices located near the city of San Francisco, California,

2. That he graduated from Stanford University in 1942, received a Master of Arts Degree in Electrical Engineering from Stanford University in 1943, was a Research Associate at Radio Research Laboratory, Harvard University from 1943 through 1945, was a partner in the firm of A. Earl Cullum, Jr., Consulting Radio Engineers, Dallas, Texas, from 1946 through 1951, and has carried out a consulting practice in San Francisco since 1952,

3. That the firm of Hammett & Edison, Consulting Radio Engineers, has been retained by Marietta Broadcasting, Inc., licensee of Station KFMB, San Diego, California, to make engineering studies of the Third Notice of Further Proposed Rulemaking of the Federal Communications Commission, released September 22, 1959, in Docket No. 6741,

4. That he has carried out such engineering work and that the results thereof are attached hereto and form a part of this affidavit, and

5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements therein made on information and belief, and as to such statements, he believes them to be true.

Robert L. Hammett
Robert L. Hammett

Subscribed and sworn to before me this 28th day of March, 1960

STATE OF CALIFORNIA, } ss.
County of San Mateo

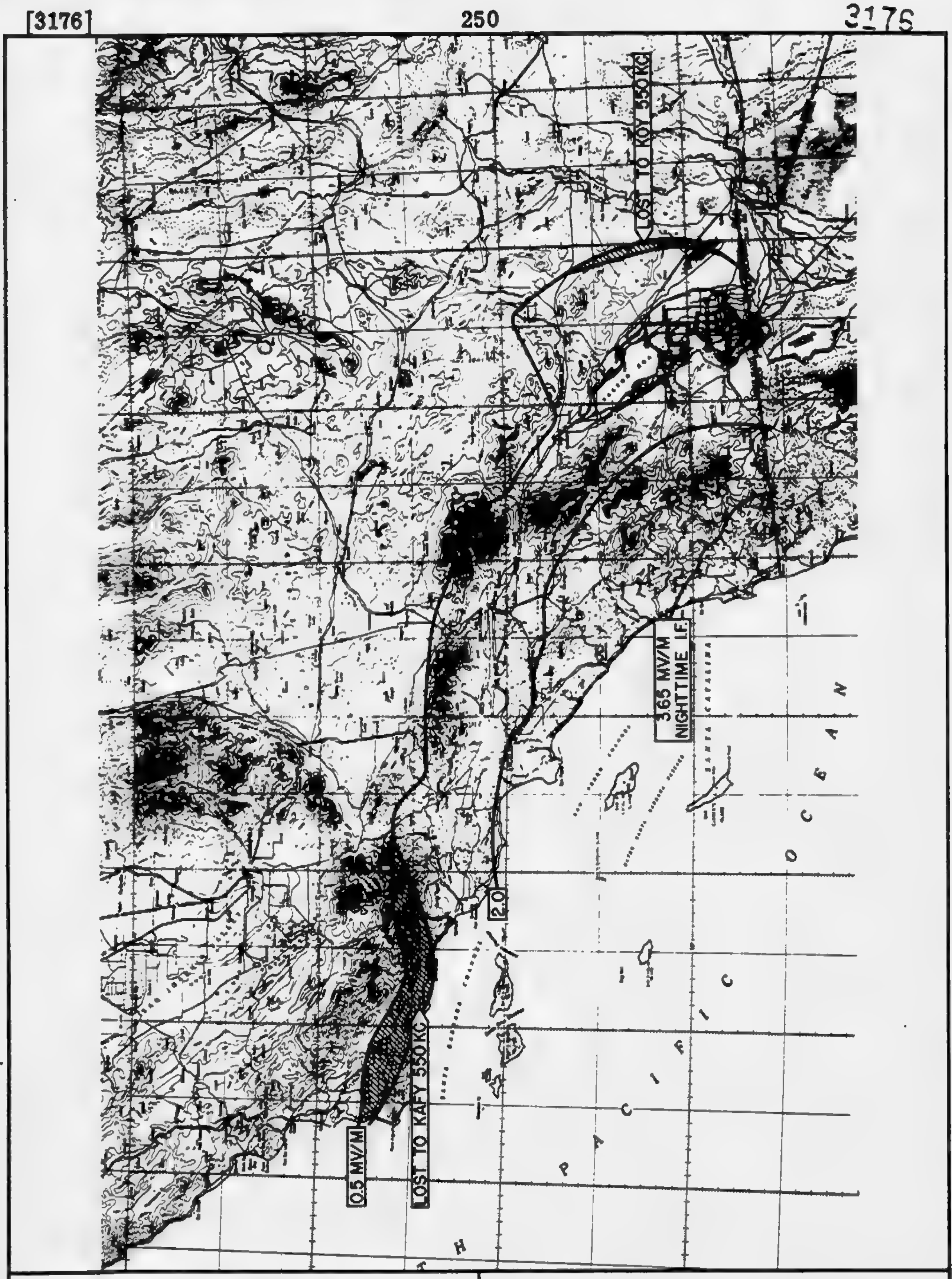
ON March 28, 19 60, *before me the undersigned, a Notary Public in and for said County and State, personally appeared* Robert L Hammett, *known to me, to be the person whose name* Appears *subscribed to the within Instrument, and acknowledged to me that* he *executed the same.*

WITNESS *my hand and official seal.*

Notary Public in and for said County and State.

JOHN R. LEWIS, Notary Public
In and for the County of San Mateo, State of California
My Commission Expires Aug. 4, 1961
2275 Brittan Ave., San Carlos, Calif.

DGMENT — GENERAL — WOLCOTTS FORM 233


LOST TO KOY 550 KC
3.65 MV/M NIGHTTIME I.F.
SANTA CATALINA
2.0
0.5 MV/M
LOST TO KAFY 550 KC
P A C I F I C O C E A N

20 0 20 40 MILES 60 80 100 120

EXISTING 540 KC COVERAGE

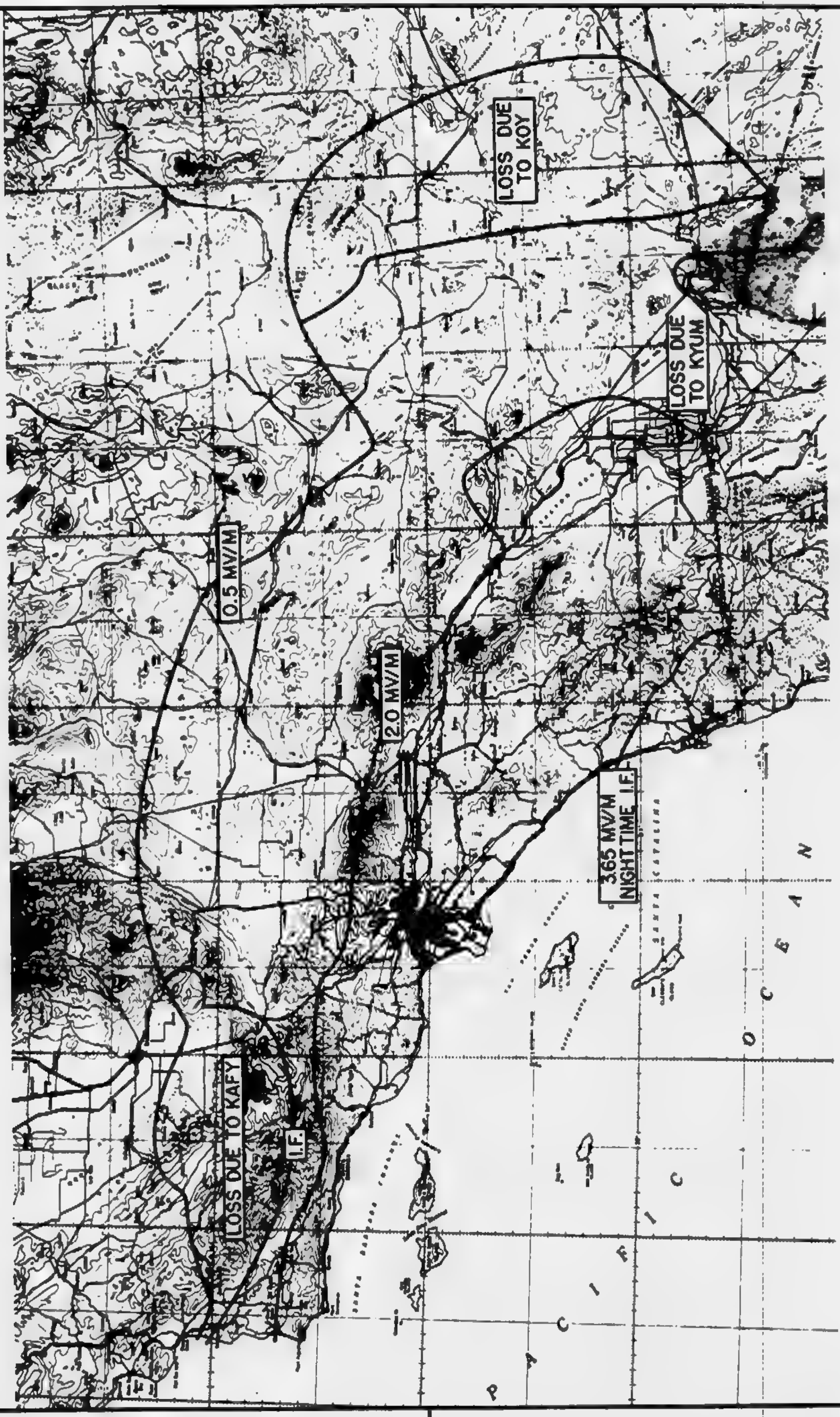
5 KW, DA-N

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

591103

FIGURE 1A


LOSS DUE TO KOY
LOSS DUE TO KYUM
0.5 MV/M
2.0 MV/M
3.65 MV/M NIGHTTIME I.F.
LOSS DUE TO KAFY
I.F.
PACIFIC OCEAN

20 0 20 40 MILES 60 80 100 120

PROPOSED 540 KC COVERAGE

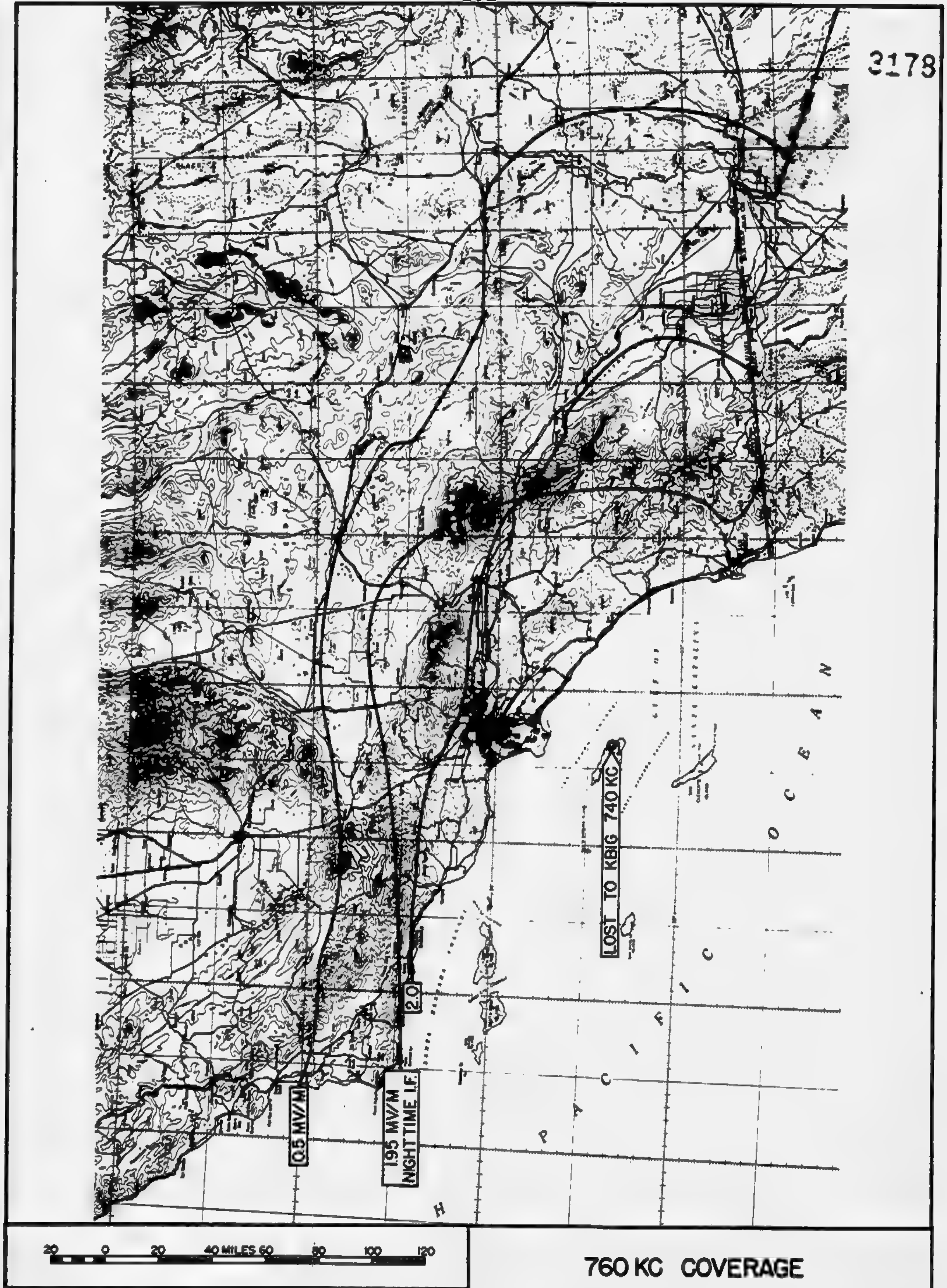
50 KW, 5 KW, DA-N

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

591103

FIGURE 18


LOST TO KBIG 740 KC
2.0
0.5 MV/M
1.95 MV/M NIGHTTIME I.F.
P A C I F I C O C E A N
20 0 20 40 MILES 60 80 100 120

760 KC COVERAGE

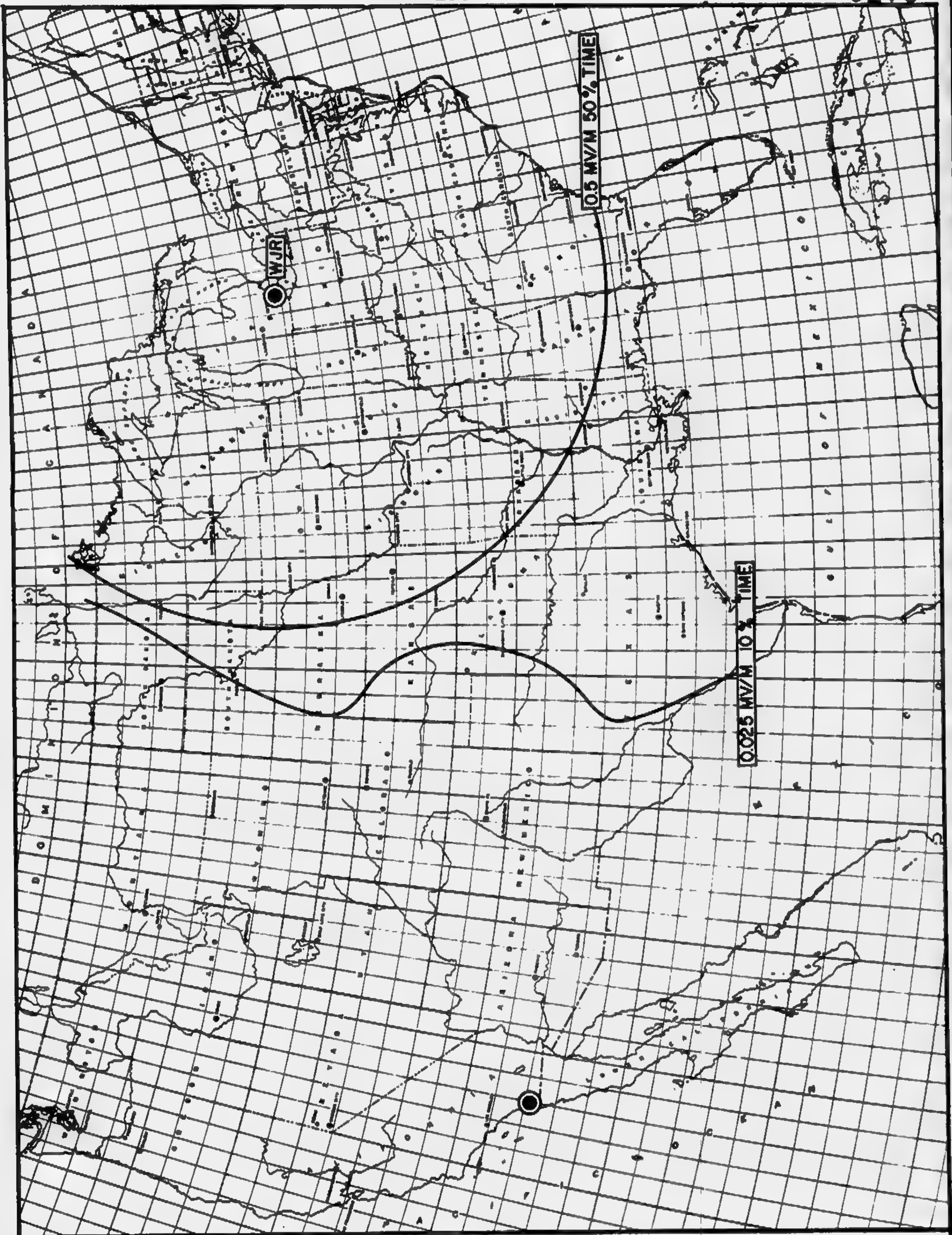
50 KW, DA-N

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

591103

FIGURE 2 A


WJR
0.5 MV/M 50% TIME
0.025 MV/M 10% TIME
100 0 100 200 MILES 500 600 700 800

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

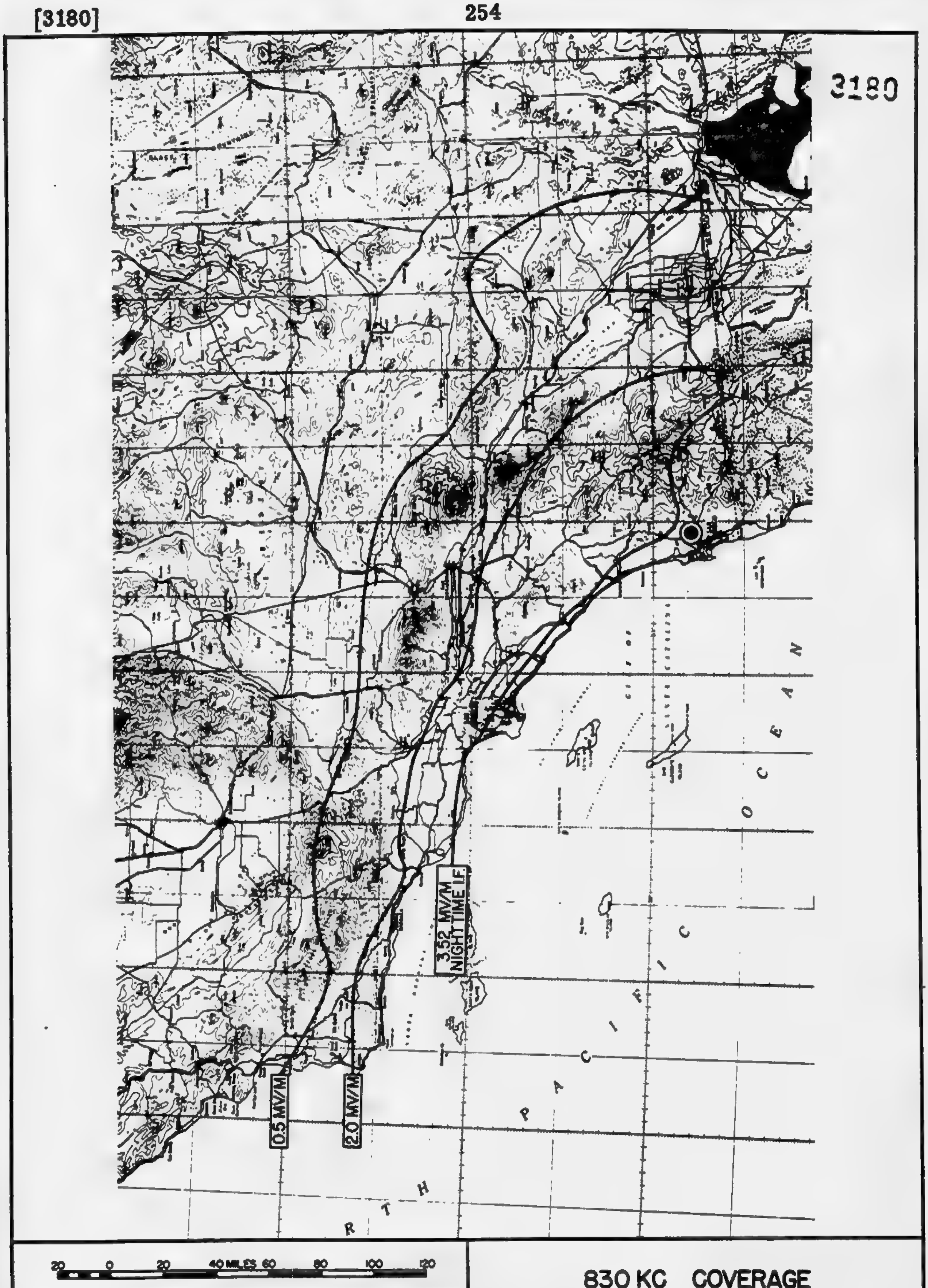
RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

760 KC
NIGHTTIME ALLOCATION MAP
50 KW, DA-N

591103

FIGURE 28

3180


P A C I F I C O C E A N
N O R T H
3.52 MV/M NIGHT TIME I.F.
0.5 MV/M
2.0 MV/M
20 0 20 40 MILES 60 80 100 120

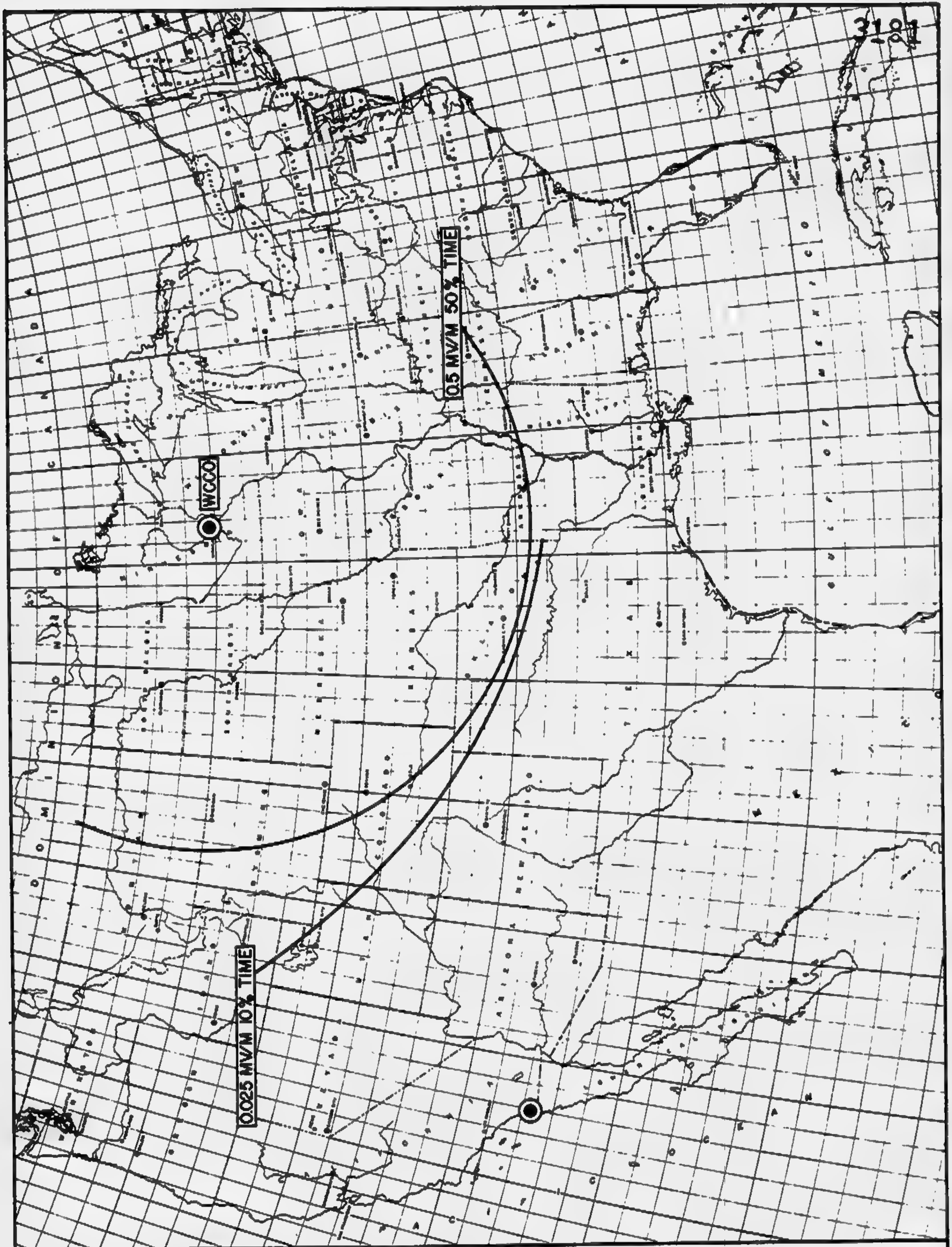
HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

830 KC COVERAGE
50 KW, DA-N

591103

FIGURE 3A


0.5 MV/M 50% TIME
WCCO
0.025 MV/M 10% TIME

100 0 100 200 MILES 500 600 700 800

830 KC
NIGHTTIME ALLOCATION MAP

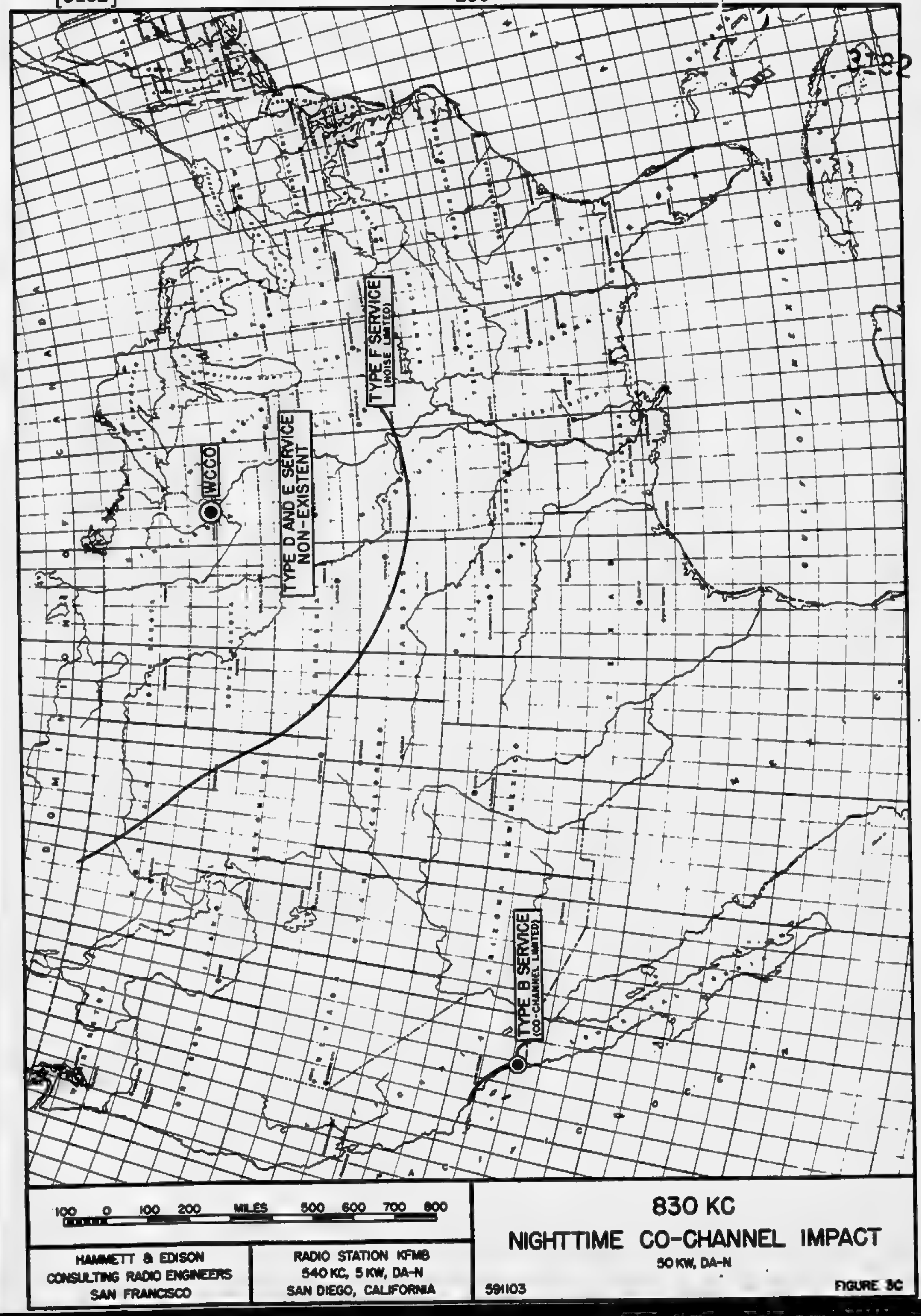
50 KW, DA-N

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

591103

FIGURE 38


WCCO
TYPE D AND E SERVICE
NON-EXISTENT
TYPE F SERVICE
(NOISE LIMITED)
TYPE B SERVICE
(CO-CHANNEL LIMITED)
100 0 100 200 MILES 500 600 700 800

830 KC

NIGHTTIME CO-CHANNEL IMPACT

50 KW, DA-N

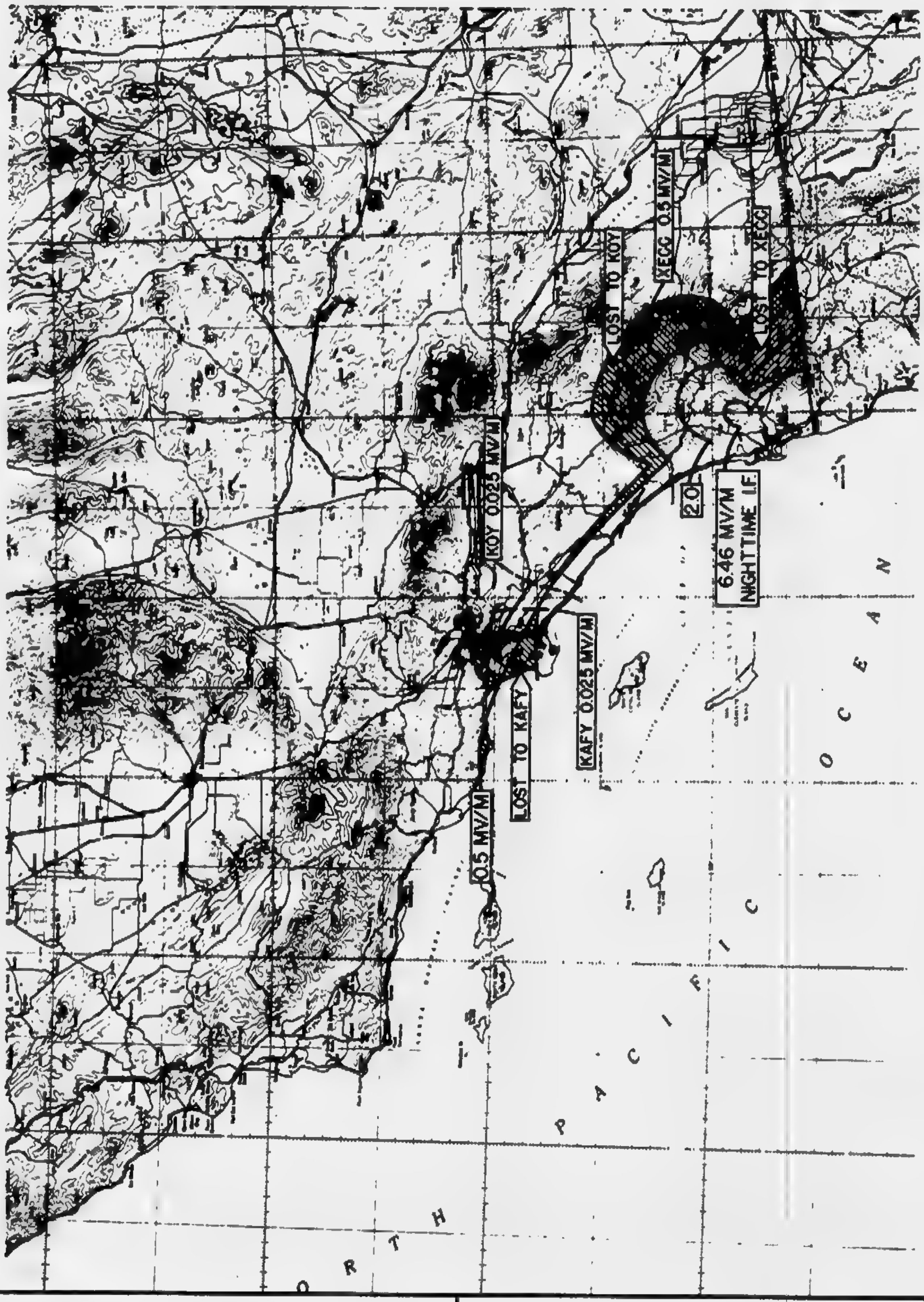
HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

591103

FIGURE 3C

3183


LOST TO KOY
XECC 0.5 MV/M
LOST TO XECC
KOY 0.025 MV/M
2.0
6.46 MV/M NIGHTTIME I.F.
KAFY 0.025 MV/M
LOST TO KAFY
0.5 MV/M
NORTH PACIFIC OCEAN

20 0 20 40 MILES 60 80 100 120

HAMMETT & EDISON
CONSULTING RADIO ENGINEERS
SAN FRANCISCO

RADIO STATION KFMB
540 KC, 5 KW, DA-N
SAN DIEGO, CALIFORNIA

550 KC COVERAGE

1 KW, DA-1

591103

FIGURE 4

[3511]

[Rec'd. June 1, 1960 - F.C.C.]

REPLY COMMENTS OF WJR, THE GOODWILL STATION, INC.

WJR, The Goodwill Station, Inc., licensee of Class I-A station WJR, Detroit, Michigan (hereinafter referred to as WJR), by its attorneys, submits its Reply Comments in the above-entitled Clear Channel proceeding. In reply to the comments submitted by others, WJR states as follows:

1. WJR is a member of the Clear Channel Broadcasting Service, an informal organization of independent stations assigned to Class I-A frequencies. As such member, WJR fully subscribes to the views expressed by Clear Channel Broadcasting Service (hereinafter referred to as CCBS) in its Initial Comments and in its Reply Comments filed this date. For the reasons expressed by CCBS, WJR is opposed to the duplication of Class I-A frequencies suggested in the Commission's Third Notice of Further Proposed Rule Making and supports the use of 750 kw on Class I-A frequencies. It is readily apparent from the engineering data submitted by CCBS that the only practical method of improving service to the over 25,000,000 persons presently residing within white areas is to furnish a stronger and more effective skywave signal to those areas. This is the reason that higher power by the Class I-A stations is required. Certainly,

[3512]

the duplication of the Class I-A frequencies as proposed by the Commission at best will result in only an insignificant reduction in the population residing in white areas but even this would be at the expense of widespread interference to the already admittedly inadequate skywave service of clear channel stations.

2. WJR submits, for the reasons set forth in its Comments filed April 1, 1960, that 760 kc (the operating frequency of WJR) should not be duplicated at night within the continental United States and, more specifically, in the State of Idaho as proposed in the Commission's Third Notice.

3. Certain parties filed counterproposals on April 1, 1960 suggesting the duplication of Class I-A clear channel frequencies in different ways from those enumerated by the Commission in its Third Notice. WJR desires to file a Reply to those counterproposals relating to 760 kc.

4. KBOX, Dallas, Texas: KBOX operated at Dallas, Texas on 1480 kc., 5 kw-D, 500 w-N, DA-2. Its counterproposal pointed out that the Third Notice does not propose the duplication of any Class I-A frequency in the State of Texas and that at least one of the 23 Class I-A channels proposed for duplication should be allocated to Texas, and specifically to Dallas, for use by a Class II station. One of the six frequencies which it proposed alternatively for use at Dallas was 760 kc. WJR submits that the KBOX counterproposal

[3513]

would not serve the public interest, convenience or necessity and should not be adopted for the following reasons:

(a) The suggested use of 760 kc at Dallas by a Class II station operating with either power of 10 kw or 50 kw will in no way tend to solve the white area problem. As indicated by the attached Affidavit of A. Friedenthal, Chief Engineer of WJR, the proposed Class II station at Dallas would have its Type B groundwave contour limited by the skywave interfering signal of WJR at night to 11.2 mv/m for 50 kw operating by WJR and to 43.4 mv/m if WJR were permitted to increase its power to 750 kw. Such severe limitation to the proposed Dallas operation would enable the station to serve only a very restricted area, and none of the extensive white area population in the State of Texas would be served. The Comments do not even allege that the white area populations in any sense would be diminished.

(b) The suggested duplication of 760 kc at Dallas would simply extend the service area of an already existing full-time station. At the present time, eight other broadcast stations operate in Dallas-Fort Worth at night. If KBOX were to vacate 1480 kc and operate on 760 kc, the former frequency would still be available at Dallas.

[3514]

(c) As shown by the CCBS Comments filed April 1, 1960, with respect to three selected Class I-A frequencies, the nighttime duplication of Class I-A channels will further degrade the already inadequate service afforded to rural and remote areas. Thus, the negligible improvement of nighttime service in the already well-served Dallas area would occur at the cost of a substantially degraded service to large numbers of persons within the skywave service area of WJR.

(d) The duplication of 760 kc at Dallas would prevent a desirable and effective improvement of WJR's secondary skywave signal which would be derived from increasing the power of the station to 750 kw.

(e) The spacing between Detroit and Dallas of 987 miles is entirely inadequate, and from an overall standpoint, will only result in a degraded service to the people of the United States.

5. KFMB, San Diego, California: KFMB operates on 540 kc, 5 kw, DA-N. This station pointed out that under the agreement between the United States and Mexico, 540 kc is specified as a Mexican 1-A channel, and it will be necessary for KFMB to cease operation on

540 kc. Although 550 kc is available for use at San Diego, KFMB does not wish to operate on this frequency because its coverage would be smaller than it hoped to achieve. The station submitted a

counterproposal that 760 kc be allocated for use in California, specifically in San Diego, instead of being duplicated in Idaho as proposed in the Third Notice. KFMB recognized that the Commission suggested that 830 kc be duplicated in California. If the KFMB proposal were adopted, both 760 kc and 830 kc would be available for use by Class II stations in California.

6. The KFMB counterproposal should not be adopted because:

(a) The nighttime duplication of 760 kc for use by a Class II station at San Diego is a good example of an extremely ill-advised waste of a Class I-A channel. San Diego and Los Angeles are extremely well served at night by existing standard broadcast stations located in those cities. The public interest is not served by the breaking down of Class I-A channel in order to permit an existing fulltime San Diego station to attempt to improve its assignment. The solution of the white area problem would be almost nil. Indeed, the only claim even advanced in this direction is the statement in the counterproposal that "Such an installation by KFMB would provide nighttime groundwave service to areas as far as 30 miles east of San Diego and would therefore cover some existing Type B white area." (Underlining supplied; see KFMB Engineering Affidavit, p. 3.)

(b) In order to attempt to give adequate protection to WJR, the required directional antenna pattern of KFMB would direct large portions of KFMB's signal over the Pacific ocean.

(c) It is admitted by KFMB that there "would be an unavoidable overlap of the KBIG [Avalon, California] 2mv/m contour and the KFMB 25 mv/m contour, and vice versa." There is no adequate justification shown for this violation of Sec. 3.37.

7. KBIG, Avalon, Santa Catalina Island, California: KBIG operates on 740 kc, 10 kw, daytime only, DA. Because of the interference received by KBIG from KCBS at San Francisco, a station operating on 740 kc with 50 kw, KBIG submits the counterproposal that 760 kc be assigned for Class II use in southern California. It is suggested in the counterproposal either that (1) KCBS be shifted from 740 kc to 760 kc or (2) KBIG be shifted from 740 kc to 760 kc and be permitted to operate both day and night. If the latter proposal were adopted, KBIG would propose to operate during the daytime from its present location on Santa Catalina Island and would build a new transmitter for its nighttime operation on the mainland approximately 35 miles east of Los Angeles. The counterproposal does not suggest the use of 760 kc in southern California as a substitute for its allocation to Idaho. The proposal to use 760 kc in the Los Angeles area on a Class II basis is in addition to the allocation of the same frequency to Idaho.

[3517]

8. WJR is opposed to the KBIG counterproposal for the following reasons:

(a) KBIG admits that the use of 760 kc in Idaho at a location designed to achieve service to white areas will require a station to be located in a sparsely populated spot on the fringe of such region. It is recognized by KBIG that such an assignment may present economic difficulties. WJR submits that the white area problem cannot be solved by the duplication of the Class I-A frequencies because adequate economic support does not exist for Class II stations in areas having the greatest white area populations and, if the Class II stations are placed in the larger cities having better economic support, very little, if any, service can be given to white areas.

(b) It is definitely not good allocation practice to break down 760 kc to provide another nighttime signal in the already well-served Los Angeles area.

(c) The employment by KBIG of two different transmitter locations, one on Santa Catalina Island and the other approximately 35 miles to the east of Los Angeles, is not an efficient or sound operation.

(d) The KBIG proposal to duplicate 760 kc both in Idaho and in the Los Angeles area is a good example of the "creeping

paralysis" to clear channels that will occur if the frequencies are duplicated at night. The history of standard broadcast allocations has shown that once a frequency has been broken down by the assignment of another co-channel station at a given point, pressures build up to such an extent for the use of the frequency at other locations that it is impossible successfully to withstand them. As a result of such "creeping paralysis", less and less service is afforded to the white areas.

9. Both the KFMB and KBIG proposals to use 760 kc in the Los Angeles - San Diego areas involve the employment of directional antenna arrays which direct the maximum radiation in the direction of Station KGU, Honolulu, Hawaii. KGU operates on 760 kc, with power of 10 kw, unlimited time, non-directional. KFMB wants to use 50 kw and KBIG a power of 10 kw. Either proposal would result in an increase of interference to KGU, a station which presently has a very low atmospheric noise limitation, as well as a low level of interference from other stations.

10. Accordingly, it is respectfully submitted that the counterproposals referred to above should be denied, that the present Class I-A clear channel frequencies should not be duplicated at night,

[3519]

and that the existing 50 kw power limitation on Class I-A stations be raised to 750 kw.

Respectfully submitted,
WJR, The Goodwill Station, Inc.
By: /s/ Reed T. Rollo
/s/ Percy H. Russell
/s/ R. Russell Eagan
of

Kirkland, Ellis, Hodson,
Chaffetz & Master

* * *

Its Attorneys

June 1, 1960

[Certificate of Service]

[3520]

AFFIDAVIT

County of Wayne)
) ss:
State of Michigan)

A. FRIEDENTHAL, having been first duly sworn on oath, deposes and says as follows:

1. That he is Chief Engineer of WJR, The Goodwill Station, Inc., licensee of standard broadcast station WJR, Detroit, Michigan, which is licensed to operate on 760 kc with power of 50 kw as a Class I-A station.

2. That his education and experience in the field of radio engineering are as follows: Graduate of U.S. Naval Radio School, San Diego, California, serving as radioman in the United States Navy for a term of four years. Attended night extension course in

mathematics, Highland Park High School, Highland Park, Michigan. Self educated by more than thirty years of practical experience in radio broadcasting.

3. That station KBOX, Dallas, Texas filed comments on April 1, 1960 suggesting the use of 760 kc by a Dallas station.

4. That the center of Dallas, Texas is 987 statute miles from the WJR transmitter, and the mid-point latitude of this path is 37.5 degrees.

5. That the WJR inverse field intensity at the pertinent angle for this path is 1723 mv/m for 50 kw power.

6. That applying the 50% skywave signal range curve and the ratios described in Exhibit 109, the limit of the Type B service of the proposed Class II station in Dallas will be 11.2 mv/m.

[3521]

7. That with WJR at 750 kw the interference limitation to the proposed Class II station would be 43.4 mv/m.

/s/ A. Friedenthal

[JURAT - Dated May 25, 1960]

[3567]

[Rec'd. June 1, 1960 - F.C.C.]

REPLY COMMENTS OF MARIETTA BROADCASTING, INC.

Comes now Marietta Broadcasting, Inc., the licensee of Station KFMB, San Diego, California, by its attorneys, and in reply to the comments filed in Part III of the clear channel rule making proceeding in response to the Third Notice of Further Proposed Rule Making (FCC 59-972), released on September 22, 1959, as supplemented, respectfully states as follows:

1. Marietta Broadcasting, Inc., is the licensee of Standard Broadcast Station KFMB, a Class II station which operates on the 540 kc channel with 5,000 watts of power, unlimited time, utilizing a directional antenna pattern at night only, at San Diego, California. An application (BP-12,721) by the licensee to increase the daytime power of Station KFMB on 540 kc to 50,000 watts, with a non-directional antenna, has been placed by the Commission in the pending file because of the Broadcasting Agreement with Mexico.

2. The Broadcasting Agreement with Mexico, which has been recently ratified by the United States Senate but has not yet entered into force pending ratification by the Government of Mexico, declares 540 kc

to be a Class I-A Mexican clear channel, and would require the displacement of Station KFMB from its present operation on 540 kc to some other frequency. During a hearing on January 24, 1960, the Commission advised the Subcommittee of the Committee on Foreign Relations of the United States Senate considering ratification of the Agreement that it is entirely possible that KFMB may obtain a frequency on a clear channel as a result of this proceeding; that serious consideration will be given to any solution of the assignment problem in an effort to reach an equitable decision; and that it is believed that an equitable and acceptable solution can be found.

3. In its comments filed herein on April 1, 1960, Marietta Broadcasting, Inc., pointed out that the plan of the Third Notice looking to the assignment of new unlimited time Class II stations upon certain designated clear channels, making possible the availability of 760 kc or 830 kc for substitute assignment, appears to offer the "equitable and acceptable solution" sought by the Commission to the problem of securing comparable facilities to compensate KFMB and its audience for the loss of 540 kc. Accordingly, in order to permit the early

implementation of the Broadcasting Agreement with Mexico, it was requested that the Report and Order to be issued by the Commission in this proceeding include an Order, pursuant to the provisions of Section 316 of the Communications Act of 1934, as amended, notifying Marietta Broadcasting, Inc., of the proposed modification of its license to specify operation on 760 kc or 830 kc as a Class II unlimited time assignment (or an another broadcast channel with comparable facilities if these frequencies are for some reason unavailable),

effective upon entry into force of the Broadcasting Agreement with Mexico or within a reasonable time after this proceeding is concluded, and that Marietta Broadcasting, Inc., be directed to show cause why such order of modification should not issue.

4. The comments which have been filed by other parties in this proceeding, insofar as they are pertinent, furnish no persuasive evidence militating against the feasibility or the desirability of KFMB's proposed solution to its assignment problem.

5. With respect to the 760 kc channel, which the Third Notice would make available for assignment in Idaho, KFMB has pointed out that the frequency can be readily used in California, with a substitute channel provided for Idaho to satisfy the criteria of the Third Notice, and that Station KFMB during daytime operation would provide a substantial degree of groundwave service to sparsely populated areas north and east of San Diego, as well as nighttime groundwave service to some existing Type B white area. A waiver of the requirements of Section 3.37 of the Commission's Rules would be required, but would clearly be in the public interest (in this connection, it is to be noted that the Commission has recently stated in The Bridgeport Broadcasting Co. (WICC), 28 F.C.C. 464, 469, that "the earlier rigid application of the rule does not and cannot foreclose us from considering whether, where circumstances exist which invoke application of the rule as an

allocation tool within the framework of our policy, the rule should be waived"). In its comments of April 1, 1960, WJR, The Goodwill Station, Inc., the licensee of Class I-A

[3570]

Station WJR, Detroit, Michigan, has urged that the Commission consider Station KGU, Honolulu, as the Class II assignment for 760 kc and not add other assignments in the west. However, as pointed out in the attached engineering statement of Robert L. Hammett, KFMB's consulting radio engineer, the existing operation of Station KGU results in no interference to Station WJR, and does not satisfy the criteria of the Third Notice for the full use of the channel. Accordingly, the operation by KFMB of a Class II station on 760 kc should not be foreclosed by Station WJR's operation on that frequency in Detroit.

6. With respect to 830 kc, which the Third Notice has proposed to make available for assignment as a Class II station in California, KFMB has determined that the channel would be an acceptable alternative substitute for its present operation on 540 kc. In its comments of April 1, 1960, Midwest Radio-Television, Inc., the licensee of Class I-A Station WCCO, Minneapolis, Minnesota, has opposed the proposed duplication of service by a Class II station in California as producing a net loss in public service. However, as pointed out in the attached engineering statement, KFMB with a properly designed antenna would provide complete protection to the existing secondary service area of Station WCCO, as predicted in accordance with the Commission's Rules, and to the Type F contour of Station WCCO, as predicted in accordance with Exhibit 109 of this docket. Accordingly, the operation by KFMB of a Class II station on 830 kc would not be properly objectionable to Station WCCO.

7. John Poole Broadcasting Co., Inc., the licensee of Station

[3571]

KBIG, Avalon, Santa Catalina Island, California, has urged that 760 kc be assigned to California so that it may make application to change from its existing daytime operation on 740 kc, with a power of 10 kilowatts, using a directional antenna, to full-time operation on 760 kc, with a power of 10 kilowatts, using a directional antenna at night only. In support thereof, it alleges that it suffers objectionable interference from Station KCBS, San Francisco, California, during certain hours, months, and cycles. Assuming such interference has been sufficiently established beyond the normal degree of interference experienced generally by broadcast stations during transitional hours, it is obvious that a request for an assignment in order to permit a modest improvement in facilities to correct somewhat limited existing interference (it is noted that Figure D attached to KBIG's comments indicates that KCBS does not provide 0.5 mv/m daytime service south of Bakersfield, and Figure E shows the calculated KBIG 0.5 mv/m contour to be located substantially south of Bakersfield) cannot be granted where there exists a competing necessity to provide some comparable facility for a licensee which must be dislodged from its existing service because of the provisions of an international agreement designed to serve the general national interest.

8. Engineering, economic, and financial considerations in opposition to the general position of the Clear Channel Broadcasting Service, that the Commission should not duplicate the existing Class I-A clear channel frequencies and should authorize higher power of at least 750 kw on the clear channel frequencies, have been set forth in comments of other

[3572]

parties, and need not be here restated. However, in the event that the Commission should be persuaded, contrary to its position at the time of the issuance of the Third Notice, that an authorization of higher allocation tool within the framework of our policy, the rule should be waived"). In its comments of April 1, 1960, WJR, The Goodwill Station, Inc., the licensee of Class I-A

Station WJR, Detroit, Michigan, has urged that the Commission consider Station KGU, Honolulu, as the Class II assignment for 760 kc and not add other assignments in the west. However, as pointed out in the attached engineering statement of Robert L. Hammett, KFMB's consulting radio engineer, the existing operation of Station KGU results in no interference to Station WJR, and does not satisfy the criteria of the Third Notice for the full use of the channel. Accordingly, the operation by KFMB of a Class II station on 760 kc should not be foreclosed by Station WJR's operation on that frequency in Detroit.

6. With respect to 830 kc, which the Third Notice has proposed to make available for assignment as a Class II station in California, KFMB has determined that the channel would be an acceptable alternative substitute for its present operation on 540 kc. In its comments of April 1, 1960, Midwest Radio-Television, Inc., the licensee of Class I-A Station WCCO, Minneapolis, Minnesota, has opposed the proposed duplication of service by a Class II station in California as producing a net loss in public service. However, as pointed out in the attached engineering statement, KFMB with a properly designed antenna would provide complete protection to the existing secondary service area of Station WCCO, as predicted in accordance with the Commission's Rules, and to the Type F contour of Station WCCO, as predicted in accordance with Exhibit 109 of this docket. Accordingly, the operation by KFMB of a Class II station on 830 kc would not be properly objectionable to Station WCCO.

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[3571]

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8. Engineering, economic, and financial considerations in opposition to the general position of the Clear Channel Broadcasting Service, that the Commission should not duplicate the existing Class I-A clear channel frequencies and should authorize higher power of at least 750 kw on the clear channel frequencies, have been set forth in comments of other

[3572]

parties, and need not be here restated. However, in the event that the Commission should be persuaded, contrary to its position at the time of the issuance of the Third Notice, that an authorization of higher power would be in the public interest, it is urged that any such authorization should be on a selected basis, and that special provision should be made for KFMB's special circumstances to preserve 760 kc or 830 kc or a comparable channel for assignment as a Class II unlimited time assignment to KFMB through a show cause proceeding.

Respectfully submitted,
MARIETTA BROADCASTING, INC.
By: /s/ Vincent B. Welch
WELCH, MOTT & MORGAN
Its Attorneys

* * *

June 1, 1960

[3573]

RADIO STATION KFMB
SAN DIEGO, CALIFORNIA

ENGINEERING STATEMENT OF ROBERT L. HAMMETT, CONSULTING RADIO ENGINEER

The firm of Hammett & Edison, Consulting Radio Engineers, has been retained by Marietta Broadcasting, Inc., licensee of Radio Station KFMB, San Diego, California, to make engineering studies of the Comments filed by various interested parties to the Third Notice of Further Proposed Rulemaking of the Federal Communications Commission, Docket No. 6741.

COMMENTS OF WJR, THE GOODWILL STATION, INC.

The Comments filed by Station WJR in Docket No. 6741 oppose the assignment of an additional 760 kc station in the West. WJR bases it opposition to duplication of the 760 kc channel on the premise that the existing operation of Station KGU, Honolulu, Hawaii, satisfies the criteria proposed by the Commission concerning the assignment of additional Class II stations to the Clear Channels. WJR also alleges that the 760 kc channel has "suffered further deterioration of service through the assignment of Station KGU --.".

Studies which have been made under my direction show that the argument of WJR with regard to Station KGU is unfounded. Station KGU is located a very considerable distance from the mainland of the United States; specifically 2355 statute miles from the nearest land which is Point Arena, north of San Francisco. The existing unattenuated radiation of Station KGU is 585 mv/m at one mile. Calculations based on the Rules of the Federal Communications Commission show that the interfering 10% time skywave field intensity of Station KGU is less than 0.025 mv/m everywhere within the continental United States. It is therefore concluded that no interference would be caused by KGU within the 50% time 0.5 mv/m skywave service contour of WJR.

Calculations based on the procedures set forth in Exhibit 109 of this docket show that the 50% time skywave field of Station KGU is a maximum of 0.014 mv/m on the mainland. This could result in some reduction of Type F service of a 760 kc station, if such service existed on the West Coast. However, it is apparent that Station WJR does not produce Type F service on the West Coast, the existing Type F service being over 1000 miles distant. The existing operation of KGU therefore results in no interference whatever to Station WJR. It is my opinion that the existing operation of Station KGU does not satisfy the criteria of the Third Notice for full use of the channel. Therefore, the assignment of a new Class II station on 760 kc in Idaho, or preferably in California for use by KFMB as proposed in the Comments filed by Marietta Broadcasting, Inc., is desirable to provide additional service to the public on that channel.

COMMENTS OF MIDWEST RADIO-TELEVISION, INC.

We have reviewed the Comments filed by Midwest Radio-Television, Inc., Station WCCO, Minneapolis, Minnesota. WCCO bases it opposition to the reallocation proposed by the Commission's Third Notice on the premise that duplication on the 830 kc channel to permit a full-time Class II operation in California would produce a net loss in public service. A careful reading of the WCCO engineering statement shows that no net loss would occur if the studies are based on Exhibit 109.

WCCO makes a comparison of the number of persons who would receive a new groundwave service from a Class II station at an assumed location at Atascadero, California, with the number of persons who would allegedly lose secondary skywave service from WCCO. Regardless of the assumptions made, it is apparent that a simple comparison of the populations receiving or losing these two entirely different kinds of service can not be significant.

In an effort to show a possible loss of service to its existing skywave service area, WCCO assumed that an Atascadero operation would cause some interference within the 0.5 mv/m 50% time skywave service area. Whether or not this would actually prove to be the case would depend, of course, upon the design of the directional antenna used by the new 830 kc operation in California. It should be noted that the operation contemplated by Station KFMB, in the event the 830 kc channel should be assigned to it by the Commission, would provide complete protection to the existing secondary service area of Station WCCO as predicted in accordance with the existing Rules. This is shown by Figure 3B in my engineering statement of March 19, 1960, supporting the Comments of KFMB.

In its Comments WCCO concurs that a Class II operation in California could provide complete protection to the Type F contour of WCCO, as predicted in accordance with Exhibit 109 of this docket. Such protection is contemplated by KFMB, as shown by Figure 3C of my earlier statement.

In objecting to duplication of its channel, WCCO also furnished data on its alleged coverage within the 100 microvolt per meter 50% time skywave contour. The Rules of the Federal Communications Commission specifically state in Section 3.182 that the nighttime secondary service area of a Class I-A station should be considered as having a limit of 500 microvolts per meter 50% time for determination of service in comparison with other stations. The claimed loss is therefore unsupported by the existing Rules. It should further be observed that the claim of loss is unrealistic due to the presence of atmospheric and man-made noise which already limits WCCO well within its 100 microvolt per meter contour. The fact that WCCO has received unsolicited mail from many distant points is no quantitative measure of service provided.

CONCLUSIONS

It is concluded that the 760 kc or the 830 kc channel could be used to solve the allocation problem created by KFMB being forced to vacate the 540 kc channel (as illustrated in the earlier Comments of Marietta Broadcasting, Inc.) and that no evidence to the contrary is contained in the above reviewed Comments on the Third Notice in Docket No. 6741.

HAMMETT & EDISON
Consulting Radio Engineers

May 25, 1960

/s/ Robert L. Hammett

[3575]

AFFIDAVIT

State of California)
) ss:
County of San Mateo)

Robert L. Hammett, being first duly sworn upon oath, deposes and says:

1. That he is a qualified engineer and a partner in the firm of Hammett & Edison, Consulting Radio Engineers, with offices located near the city of San Francisco, California,

2. That he graduated from Stanford University in 1942, received a Master of Arts Degree in Electrical Engineering from Stanford University in 1943, was a Research Associate at Radio Research Laboratory, Harvard University from 1943 through 1945,

was a partner in the firm of A. Earl Cullum, Jr., Consulting Radio Engineers, Dallas, Texas, from 1946 through 1951, and has carried out a consulting practice in San Francisco since 1952.

3. That the firm of Hammett & Edison, Consulting Radio Engineers, has been retained by Marietta Broadcasting, Inc., licensee of Radio Station KFMB, San Diego, California, to make engineering studies of the Comments filed by various interested parties to the Third Notice of Further Proposed Rulemaking of the Federal Communications Commission, Docket No. 6741.

4. That he has carried out such engineering work and that the results thereof are attached hereto and form a part of this affidavit, and

5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements therein made on information and belief, and as to such statements, he believes them to be true.

/s/ Robert L. Hammett

[JURAT - Dated May 25, 1960]

[3586]

[Rec'd. June 1, 1960 - F.C.C.]

REPLY OF MID WEST RADIO-TELEVISION, INC. TO COMMENTS CONCERNING 830 kc (THIRD NOTICE)

Mid West Radio-Television, Inc., (WCCO), Minneapolis, Minnesota, by its attorneys, replies to the Comments of E. L. Cord d/b as Los Angeles Broadcasting Company, John Poole Broadcasting Co., Inc., and Marietta Broadcasting, Inc., as follows:

1. The Third Notice in these proceedings proposes the assignment of a new 10 to 50 kw, fulltime, Class II station on 830 kc in the State of California.

2. Four Comments were filed in support of this and for another breakdown of 830 kc -- all by parties interested in an expansion of service for existing stations in major metropolitan markets: two, in an expansion of service for existing stations in the Los Angeles area (KFAC and KBIG); one, in an expansion of service for existing Station WNYC in the New York City area.* This Reply will deal with the Comments of the first three.

[3587]

3. The admitted and basic purpose of these proceedings is to determine how best to utilize the nation's clear channels in order to expand and improve broadcast signals, particularly at night, to those who do not now have much - or any - service from a strong, reliable signals. The latest proposal (Third Notice) seems to be directed toward achieving this objective by means of the addition of a new groundwave service only to every one of the clear channels -- at the expense, even, of some of the skywave service now rendered by the existing I-A stations, and apparently in preference to the far greater potential gains to be

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* Because of the special, non-allocation as well as allocation aspects of the proposal of WNYC, WCCO has filed a separate Reply to WNYC's Comments in these proceedings.

achieved in skywave service to needful areas through higher power for such stations.

4. The validity or worth of the means suggested - new groundwave service - must be tested by the extent to which it will make a significant reduction in "white areas." The Comments of WCCO and others in response to the Third Notice show that even adding all the new groundwave service of all 23 proposed Class II stations together, an entirely insignificant contribution would be made to bringing service to needful areas.

5. The Comments in support of the breakdown of 830 kc foreshadow clearly that not even such an insignificant contribution would be made. They show, indeed, that the breakdown of the clear channels would be put to a completely contrary purpose - that of providing more service to the already abundant service

enjoyed by heavily populated urban areas.

6. Thus, 5 kw regional KFAC in Los Angeles urges that 830 kc be broken down because the size and importance of the Los Angeles urbanized area, relative to other such areas, entitles it to "at least one more unlimited time 50 kw station." (Comments of Los Angeles Broadcasting Company, page 3). John Poole Broadcasting Company, having become dissatisfied with its grant on 740 kc for KBIG in Avalon, desires to have 760 kc broken down so it can improve its service in the Los Angeles area and believes the breakdown of 830 kc will enhance its objectives. And KFMB, San Diego, under the necessity of possibly having to relinquish 540 kc to which it voluntarily shifted from 550 kc some years ago, now feels dissatisfied with coverage on 550 kc and wants 760 or 830 kc to be broken down so it can duplicate the 540 kc daytime coverage in the Los Angeles area.

7. These Comments favoring the breakdown of 830 kc, it is submitted, only reinforce the position in WCCO's Comments that if the

best method of increasing clear channel service - higher power for the I-A stations - is not adopted, then preservation of existing skywave service from such station is far superior to the suggested alternative breakdown of the remaining clear channels.

Respectfully submitted
MIDWEST RADIO-TELEVISION, INC.
By Peter Shuebruk
* * *
Its Attorneys

June 1, 1960

[3640]

[Rec'd. June 1, 1960 - F.C.C.]

REPLY COMMENTS OF WGN, INC.

Comes now WGN, Inc., licensee of Class I-A station WGN, Chicago, Illinois (hereinafter referred to as WGN), and submits its Reply Comments in the above-entitled matter. For its Reply Comments it states as follows:

1. WGN is a member of the Clear Channel Broadcasting Service (hereinafter referred to as CCBS), an informal organization of independently owned Class I-A clear channel stations. WGN has participated in all aspects of this clear channel proceeding through its membership in CCBS.

2. WGN is familiar with the Comments filed heretofore by CCBS and with the Reply Comments being filed this date by CCBS. WGN is in agreement with the points of view expressed by the CCBS Comments and Reply Comments.

[3641]

3. In view of the fact that certain of the Comments filed by other parties in this proceeding urged the Commission to adopt allocation

policies which are inconsistent with the Third Notice of Further Proposed Rule Making, together with the fact that they concern specifically the frequency utilized by WGN (720 kc), WGN is submitting Reply Comments to these counterproposals. It urges that the counterproposals not be adopted.

4. The counterproposals to which WGN is submitting Reply Comments, and the reasons why WGN strongly believes that they should not be accepted are as follows:

5. KBOX -- KBOX operates at Dallas, Texas on 1480 kc, 5 kw LS, 0.5 kw N, DA-2. The counterproposal submitted by KBOX indicated that the Third Notice of Further Proposed Rule Making does not propose that any of the Class I-A frequencies be duplicated within the State of Texas; that since there is need for another Class II station in the State of Texas, at least one of the 23 Class II-A stations proposed for duplication should be allocated for use in Texas, and more specifically in Dallas; and that one of the six frequencies which KBOX indicates could be used by a Class II station in Texas is 720 kc.

(a) The proposal to duplicate 720 kc at Dallas represents an exceedingly poor allocations policy which is inconsistent with

the overall public interest. It would not add any nighttime broadcast service to the over 25,000,000 people residing within the United States who presently are deprived of an acceptable groundwave service at night and therefore are dependent upon skywave service for their only nighttime broadcast signals. The distance from the WGN transmitter site to the main Post Office in Dallas is 798 miles (See affidavit of Howard T. Head attached hereto.) This short mileage separation is inconsistent with the minimum mileages recommended in the Third Notice of Further Proposed Rule Making and results in the proposed Class II station at Dallas being limited at night by WGN operating with 50 kw to an extremely high value between 19.26 mv/m and 20.5 mv/m (See attached Head affidavit). A limitation of this order would restrict the Class II station to a very small area at Dallas and not enable it to serve any white area at all. If the power of WGN were increased to 750 kw, as proposed by WGN, the limitation to the signal of the proposed Dallas Class II station on 720 kc would lie between 74.6 and 79.3 mv/m (See attached affidavit of Mr. Head). Moreover, the allocation proposed by KBOX effectively would prevent WGN from increasing its power to 750 kw.

[3643]

(b) The Dallas-Fort Worth area is served at night by eight other stations located in these cities. The KBOX proposal would simply permit KBOX to improve somewhat its nighttime service to the Dallas area, which is already well served with groundwave signals.

(c) As CCBS has demonstrated in its Comments heretofore filed, the only practical way to improve nighttime radio service to the millions of people residing in white areas is through higher power on the Class I-A frequencies. The KBOX proposal is inconsistent with this object. Moreover, as shown by the CCBS Comments, operation of Class II stations as proposed in the Third Notice will cause substantial degradation of the existing nighttime radio service in most of the white areas of the United States. Operation of a Class II station on 720 kc at a distance of only 798 miles from the WGN transmitter would interfere with WGN's extended skywave nighttime service.

(d) The KBOX suggestion that 720 kc be duplicated at night at Dallas is similar in one respect to substantially all of the proposals for nighttime duplication filed by other parties to this proceeding. This similarity exists in the fact that the parties supporting nighttime duplicating stations be located in the large centers of population which already receive from existing stations adequate nighttime service. Indicative of the fact that the sparsely settled areas do not have sufficient economic strength to support 10 kw or 50 kw directionalized Class II stations is the significant point that parties urging duplication suggest the building of the Class II stations in cities such as Dallas which are already well served at night.

6. KOOK -- KOOK is authorized to operate at Billings, Montana on 970 kc, 5 kw, unlimited time. The Commission proposed in its Third Notice that 650 kc be duplicated in Montana; that 660 kc not be duplicated within the continental United States (KFAR operates on 660 kc in Alaska); and that 720 kc be duplicated in Nevada. Station KOOK submitted a counterproposal suggesting (1) that 660 kc be allocated for use by a Class II station in Montana, specifically Billings, in lieu of 650 kc; (2) that 650 kc be assigned to Alaska and utilized by KFAR instead of 660 kc; (3) that 670 kc, proposed in the Third Notice for duplication in Idaho, be allocated to Nevada; and (4) that 720 kc, proposed by the Commission for use in Nevada, be assigned to Idaho. The primary reason asserted by KOOK for the frequency shifts is that 660 kc has an obvious

[3645]

advantage over 650 kc for use in Montana because of the greater distance of Billings from New York City (WRCA, 660 kc), 1,755 miles, than from Nashville (WSM, 650 kc), 1,008 miles. Also, the switch of 670 kc and 720 kc between Idaho and Nevada would eliminate adjacent channel problems arising from the use of 660 kc in Montana.

(a) KOOK computes the nighttime limitation to a proposed Class II station at Billings on 650 kc to be 5.2 mv/m contour. This limitation would be suffered as a result of radiation from WSM, Nashville, on the same frequency. Very significantly, KOOK states "This is a comparatively high nighttime limit and a severe limitation in coverage for a station whose purpose is to serve a large nighttime 'white' area" (Engineering Affidavit of Everett L. Dillard, P. 1). Thus, it is in effect admitted that nighttime limitations of the order of 5 mv/m would not permit a Class II station to accomplish the purpose it is designed to fulfill. But, the distance from the center of Idaho to Chicago is the same as the distance from Billings to Nashville. Therefore, a Class II station on 720 kc in Idaho, as proposed in KOOK's counterproposal, would be limited by the signal from WGN in Chicago as severely as

[3646]

the 5.2 mv/m Billings limitation to which KOOK so strongly objects. If the 5.2 mv/m limitation is undesirable for a Class II station in Montana, it is equally poor allocation practice to limit a Class II station on 720 kc in Idaho to the same extent.

(b) KOOK argues that the same reasons that existed thirty years ago for the establishment of Class I-A clear channel stations no longer prevail because of changes which have been experienced in radio, television and population trends. This argument completely overlooks the fact that the number of persons residing within the white areas of the United States substantially increased over the years so that today there are over 25,000,000 people who must rely upon skywave signals for their only nighttime broadcast service. The changes referred to by KOOK do not justify a breakdown of the clear channels. To do so degrades the ability of Class I-A stations to render skywave service to the white areas and at the same time enables the proposed Class II stations to supply groundwave service to only a negligible portion of the white area residents. It is important to note that KOOK did not even attempt to show the extent to which it would render service to the white areas if a Class I-A channel were to be duplicated by a Class II station in Billings. Billings already

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has three unlimited time stations. As shown by Exhibit 1 attached to the CCBS Comments, there are substantial red and blue areas surrounding Billings. A Class II station could contribute only in a minor way in rendering service to residents in white areas if it were located at Billings.

(c) KOOK also argues that decisions should be reached concerning the duplication of the Class I-A channels prior to the time that the Commission considers the question of raising the power limitation of Class I-A stations. It contends that after duplication has been settled, the question whether to increase the power of Class I-A stations should be determined on a "case-by-case" basis. This is putting the cart before the horse. The duplication of clear channel frequencies by Class II stations effectively would foreclose the question as to the increase in power of the Class I-A stations, or, at best, would place most substantial barriers in the pathway.

7. KOLO -- KOLO operates on 920 kc, 1 kw, unlimited time at Reno, Nevada. The Commission's Third Notice of Further Proposed Rule Making suggested that 720 kc be duplicated in Nevada. KOLO wants to benefit by the Commission's proposal and filed comments recommending that the channel be used at Reno.

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(a) KOLO concedes that in order "to give practical meaning to the proposal [of the Commission], markets large enough to support the high power stations must exist." Most of the sparsely populated white areas in the West do not provide sufficient economic strength to support a Class II 10 kw, much less a 50 kw station.

This fact is recognized by many of the parties filing Comments in support of duplication. However, it is an illogical concept to locate the Class II stations in markets such as Reno which are already well served by existing stations. Reno at present has five fulltime operating broadcast stations. The absurdity of duplication 720 kc at Reno is demonstrated by the KOLO statement indicating that even if the Class II Reno station were to operate with 50 kw, it would provide a first nighttime primary service to only 27,325 persons (KOLO Comments, p. 2). This is but 1/10th of 1% of the number of white area residents in the continental United States, yet this miniscule contribution to rendering white area service would be made at the cost of a substantial degradation of the nighttime skywave service of WGN. (See Exhs. 85 to 90 of the CCBS Comments for an illustration of degradation of skywave service of three Class

I-A stations resulting from the suggested duplication). The large scale interference to a Class I-A station is clearly shown by the maps portraying comparable interference to WSM on 650 kc. (CCBS Exhibits 85 and 86).

8. For the reasons set forth above, WGN respectfully submits that the KBOX, KOOK and KOLO counterproposals are inconsistent with the overall public interest. Moreover, they would present substantial barriers to the only practical method of rendering an improved service to the white area population. WGN supports the views expressed by CCBS in its Comments and Reply Comments urging that the Class I-A frequencies not be duplicated and that the present maximum of 50 kw on Class I-A stations be increased to 750 kw to provide a needed and

and necessary improvement in nighttime broadcast service to the people of the United States.

Respectfully submitted,

WGN, Inc.

By /s/ Reed T. Rollo

/s/ Percy H. Russell

/s/ R. Russell Eagan

of

Kirkland, Ellis, Hodson,
Chaffetz & Masters

* * *

Its Attorneys

June 1, 1960

[3650]

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
1710 H STREET, N. W.
WASHINGTON 6, D. C.

* * *

* * *

May 24, 1960

City of Washington)
District of Columbia) ss

Howard T. Head, being first duly sworn, upon oath deposes and says that he is a consulting radio engineer, a partner in the firm of A. D. Ring & Associates, with offices at 1710 H Street, N. W., Washington, D. C. He is a registered professional engineer (Reg. No. 2521) in the District of Columbia. His qualifications as an engineer are a matter of record with the Federal Communications Commission.

The firm of A. D. Ring and Associates has been retained by WGN, Inc., licensee of Standard Broadcast Station WGN, Chicago, Illinois, to prepare engineering comments on behalf of WGN in opposition to a proposal of KBOX, Dallas, Texas, in Docket 6741 for the use of 720 kc at Dallas, Texas.

Station WGN is a Class I-A station licensed to operate on the clear channel of 720 kc at Chicago, Illinois, with a nondirectional power of 50 kw, unlimited hours. The distance from the WGN transmitter site to the main post office in Dallas, Texas is 798 miles.

Table I, below, gives the details for the computation of nighttime interference at Dallas, Texas, based upon the present

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50 kw operation of Station WGN and upon the assumed operation of WGN using an input power of 750 kw, unlimited time. Nighttime limitations at Dallas are given using both Figure 1 and Figure 2 of the Commission's Technical Standards for each mode of operation.

TABLE I

Nighttime Limitation at Dallas, Texas

					Night Limit at Dallas	
WGN Facilities	Distance to Dallas	WGN Radiation (mv/m)	Mult (Fig. 1) (mv/m)	Mult (Fig. 2) (mv/m)	Based on Fig. 1 (mv/m)	Based on Fig. 2 (mv/m)
720 kc 50 kw-U	798 mi.	1775	0.0577	0.0542	20.5	19.26
720 kc 750 kw-U	798	6870	0.0577	0.0542	79.3	74.6

Table II lists the standard broadcast stations now licensed for unlimited-time operation which specify either Dallas or Fort Worth, Texas, as their principal city.

TABLE II

Dallas/Fort Worth Unlimited-Time Standard Broadcast Stations

Station	Facilities
KLIF, Dallas, Texas	1190 kc, 50 kw-L.S.; 1 kw-N, DA-2
KRLD, Dallas, Texas	1080 kc, 50 kw-U; DA-N
WFAA/WBAP, Dallas, Texas	570 kc, 5 kw-U-DA-2

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Station	Facilities
WFAA/WBAP, Dallas, Texas	820 kc, 50 kw-U
WRR, Dallas, Texas	1310 kc, 5 kw-U-DA-N
KBOX	1480 kc, 5 kw-L.S.; 500 w-N, DA-2
KFJZ, Fort Worth, Texas	1270 kc, 5 kw-U, DA-1
KXOL, Forth Worth, Texas	1360 kc, 5 kw-L.S.; 1 kw-N, DA-N
KCUL, Fort Worth, Texas	1540 kc, 50 kw, L.S.; 1 kw-N, DA-2

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Affiant states that these calculations were made by him personally or under his direction and that all facts contained herein are true of his own knowledge except where stated to be on information or belief, and as to those facts, he believes them to be true.

/s/ Howard T. Head
Affiant

[JURAT - Dated May 24, 1960]
[Certificate of Service]

[3666]

[Rec'd. June 1, 1960 - F.C.C.]

REPLY COMMENTS OF CLEAR CHANNEL BROADCASTING SERVICE

Clear Channel Broadcasting Service, hereinafter referred to as CCBS, by its attorneys, herewith submits its Reply Comments in Part III of the above-entitled proceeding. The Reply Comments were initially due May 1, 1960, but by appropriate order of the Commission, the date for filing Reply Comments was extended to June 1, 1960.

I

INTRODUCTION

1. Comments were filed in Part III of this proceeding by 87

parties. The comments took a wide range -- some supported the Commission's suggestions set forth in the Third Notice of Further Proposed Rule Making, others opposed such suggestions *in toto*, while still others advanced counterproposals going far beyond the suggestions of the Commission. It is impractical for CCBS to reply in detail to each of the voluminous comments submitted in this proceeding. It has been determined that the most appropriate procedure would be to reply to the comments by groups, separating them by topics and subject matter. The failure of CCBS to reply specifically to any argument set forth in a comment supporting the duplication of the Class I-A clear channel frequencies or advocating the retention of the present

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power limitation of 50 kw is not to be construed as a waiver of the CCBS position regarding that particular argument or point. The very length of the comments filed and the necessity of keeping the Reply Comments to a reasonable size prevents the answering of every argument advanced by each party opposing the CCBS position on the allocation questions.

2. The CCBS Reply Comments will discuss the positions taken by the various parties with respect to each of the questions presented by this proceeding.

II

THE EXISTENCE TODAY OF AN EXTENSIVE WHITE AREA IS FIRMLY ESTABLISHED BY THIS RECORD AND IS NOT DISPUTED BY ANY OF THE PARTIES

3. The Comments of CCBS demonstrated that as of July 1, 1957, the white area totalled 1,725,095 square miles representing 57.99% of the total land area of the continental United States, and that the total number of people residing within this white area was 25,631,259 (See CCBS Comments, p. 9). Approximately three-fourths of the white area was located west of the Mississippi River, but approximately three-fourths of the white area population resided east of the Mississippi

River (Ibid). It was also shown by the CCBS Comments that no substantial change in the size of the white area or the population residing therein has been effectuated since the foregoing study was concluded (Ibid).

4. An examination of all of the comments submitted reveals that there was no challenge of the existence or size of this radio desert. Nor was there any suggestion that the white areas are confined to a particular portion or segment of the United States. There is universal agreement that the white areas exist in all regions, i.e., New England, Middle Atlantic, Southern, Midwestern, Southwestern, Rocky Mountain and Pacific states.

There was a suggestion, however, by some of the commentators that the clear channel concept of broadcasting had been outmoded by the passage of time; that people do not listen to radio signals from stations located at substantial distances from their homes; that, generally speaking, listeners prefer radio service from nearby stations; and that shifts in population have made less necessary reliance upon clear channel nighttime broadcast service.

5. CCBS agrees that changes have occurred in the broadcasting medium over the years and that, other things being equal, some listeners may prefer to tune their receivers to stations located in their own communities rather than to stations located many miles distant. However, these arguments and contentions miss the entire point regarding the justification and necessity for the clear channel concept of broadcasting. Although changes have occurred and while some listeners may prefer program service originating from stations in their own localities, these facts in no way militate against the necessity for adequate and multiple clear channel nighttime skywave service. These arguments advanced by other parties cannot change the basic fact that a substantial portion of our population located across the entire United

States is necessarily required to rely upon signals from clear channel stations in order to receive any nighttime radio service.

6. Today, over 25,000,000 people cannot receive any nighttime broadcast service except that which is available to them from the skywave signals of relatively distant clear channel stations. This is true because their homes are beyond the range of an acceptable nighttime groundwave signal from any station, and by necessity they must tune in the skywave signal of a clear channel station if they wish to listen to radio after

* * * * *

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question whether economic support existed in the designated communities. It was felt that if emphasis was placed upon white area coverage, the optimum showing from the standpoint of the only conceivable justification for the nighttime duplication of clear channels would be presented. Two different methods of computing the number of people served at night by the 22 Class II stations were made (CCBS Comments, Vol. 1, pp. A-9 to A-11). Even if all of the persons who could be served by twenty-two 50 kw Class II stations at night were considered as residing in white areas (an assumption obviously contrary to facts), the total white area population, with the power of the Class I-A stations retained at 50 kw, would be only insignificantly reduced. The percentage reduction would range between 3.72% and 6.75% (Ibid).

8. Nothing filed by the parties proposing duplication of the clear channel frequencies changes in any material respect the foregoing estimates made by CCBS in its Comments. The individual coverage studies of the parties favoring duplication reveal that, from the most optimistic standpoint, a relatively small portion of the existing white area and population (not exceeding 5% of the population and a negligible percent of the area) will gain nighttime interference-free groundwave service even if all of the clear channels were to be duplicated as proposed by the Commission (see attached Affidavit of G. F. Leydorf, Consulting Radio Engineer).

9. When CCBS filed its Comments it did not then, and does not now, believe that the proposed Class II stations would be constructed in regions where the optimum coverage of white areas could be obtained. The comments filed by the various parties supporting the breakdown of the clear channels demonstrates most conclusively that negligible inroads in the white area population would result if the suggestions in the Third Notice were adopted. CCBS has made an analysis of the comments to ascertain the cities requested for the location of the Class II stations and the number of unlimited time broadcast stations already in existence in such cities. This analysis reveals that by and large the parties supporting duplication of the clear channels are those seeking to improve the facilities of stations they operate in cities already having multiple broadcast services. The analysis also demonstrates that the very persons supporting duplication do not propose the use of the Class II stations in areas where any sizeable reduction of the white area populations can be achieved. This analysis is as follows:

Clear Channel Frequency	Location of Class II Station Proposed in Comments	Present Number[1/] of Full Time Stations Licensed to Cities Proposed for Duplication
640 kc	Akron, Ohio	2
	(Cleveland)*	(7)*
640 kc	Washington, D. C.	6
	(Bethesda, Md., Arlington, Va.)	(2)
640 kc	Harrisburg, Pa.	4
640 kc	Scranton, Pa.	4
650 kc**		
660 kc	Phoenix, Arizona (Mesa, Tempe, Glendale)	(3)

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[1] Source: Radio Station Directory, 1960, published by Triangle Publications, Inc.

* Cities having full time broadcast stations located close to the cities chosen in comments as the sites for the Class II stations have been included in parentheses because the count of full time radio stations would be incomplete if only stations in the city of duplication were tabulated. Figures in parentheses indicate the number of full time stations in such nearby cities.

** Frequencies marked by a double asterisk were not proposed for duplication at any specific location by those filing comments.

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Clear Channel Frequency	Location of Class II Station Proposed in Comments	Present Number[1] of Full Time Stations Licensed to Cities Proposed for Duplication
660 kc	Omaha, Nebraska	4
660 kc	Billings, Mont.	3
660 kc	Dallas, Texas	9
670 kc **		
700 kc	Dallas, Texas	9
720 kc	Dallas, Texas	9
720 kc	Reno, Nevada	5
750 kc	Portland, Oregon	6
760 kc	Dallas, Texas	9
760 kc	San Diego, Calif.	6
760 kc	Los Angeles, Calif. (Long Beach, Pasadena)	12 (5)
760 kc	San Francisco, Calif. (Berkeley, Oakland, San Jose, Vallejo)	9 (9)
780 kc	Dallas Texas	9
780 kc	Las Vegas, Nevada	9
780 kc	Woodland, Calif.	0
820 kc	Yakima, Wash.	3

Clear Channel Frequency	Location of Class II Station Proposed in Comments	Present Number[1] of Full Time Stations Licensed to Cities Proposed for Duplication
830 kc	Los Angeles, Calif. (Long Beach, Pasadena)	12 (5)
830 kc	New York, N. Y. (White Plains, Woodside, Newark, Paterson)	13 (7)
840 kc **		
	[3673]	
870 kc	Lansing, Mich.	2
880 kc	Grand Island, Nebraska	2
880 kc	Dallas, Texas	9
880 kc	Rapid City, S. Dak.	2
890 kc	Dallas, Texas	9
1020 kc	Los Angeles, Calif. (Long Beach, Pasadena)	12 (5)
1020 kc	Albuquerque, N. Mex.	5
1020 kc	El Paso, Texas	3
1020 kc ***		
1030 kc ***		
1040 kc **		
1100 kc	Seattle, Wash. (Tacoma)	8 (3)
1100 kc	San Francisco, Calif. (Berkeley, Oakland, San Jose, Vallejo)	9 (9)

*** Westinghouse filed comments which, subject to stipulated conditions, indicated how 1020 kc, 1030 kc and 1100 kc could be duplicated at designated cities by multiple Class II stations with low power. These cities have not been included in the table because the Westinghouse proposal for multiple duplication is not consistent with the FCC criteria set out in the Third Notice of Further Proposed Rule Making (Part III) and is more responsive to Part II. Indeed, the proposal was previously filed in Part II.

Clear Channel Frequency	Proposed Location of Class II Station	Present Number[1] of Full Time Stations Licensed to Cities Proposed for Duplication
1100 kc ***		
1120 kc **		
1160 kc	Goldsboro, N. C.	1
1160 kc	Chattanooga, Tenn.	5
1160 kc	Asheville, N. C. - Greenville - Spartanburg, S. C.	10
1180 kc **		
1200 kc	Sault Ste. Marie, Mich.	1
1200 kc	Green Bay, Wisconsin	3
1200 kc	Keene, N. H.	1
1210 kc	Saginaw, Michigan (Bay City)	2 (1)

10. It will be noted from the foregoing list that only one comment proposed the construction of a Class II station in a community which has no full time station. This comment was filed by Wagner Broadcasting Company which has an application on file with the Commission for a new daytime only station on 780 kc at Woodland, California. The power requested in the application is 1 kw. Since the Third Notice suggested the duplication of 780 kc in Nevada, Wagner Broadcasting Company is disturbed that the implementation of the Commission's Third Notice would prevent favorable action on its 780 kc application at Woodland. Wagner Broadcasting Company does not object to the use of 780 kc in Nevada so long as the same frequency can also be utilized at Woodland. If the use of the frequency in Nevada would foreclose its assignment at Woodland, Wagner objects to the Nevada proposal. Since Wagner is primarily interested in protecting its pending

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REPLY COMMENTS OF JACKSON BROADCASTING & TELEVISION CORPORATION

Jackson Broadcasting & Television Corporation, licensee of standard broadcast station WKHM, Jackson, Michigan, by its attorneys, respectfully submits the following reply to comments filed in response to the Commission's Third Notice of Further Rule Making (FCC 59-972) in the above styled proceeding.

1. The Third Notice, limited almost entirely to a discussion of nighttime service of standard broadcast stations, invited comments and suggestions as to how service might be provided to areas and populations, largely rural, without adequate nighttime service. Among the comments received are suggestions that existing clear channel stations be permitted to operate with maximum powers of 750 kilowatts, an increase of 15 times over the present and long-established 50 kw limit.[1] Jackson Broadcasting & Television Corporation most emphatically opposes all such super-power proposals.

2. Jackson is located approximately 70 miles west of Detroit, center-to-center. Because of its proximity to Detroit, the one clear channel station in Detroit, WJR, has claimed that it provides satisfactory service to Jackson as well as to many other cities in Michigan. For example, as long as Station WJR was affiliated with the radio network of the Columbia Broadcasting System, there were no CBS affiliates in any Michigan city within 130 miles of Detroit. Operation of Station WJR with power in excess of its present 50 kw would be disastrous for almost all existing stations in Michigan's Lower Peninsula. The service which

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[1] One party proposed a maximum power of 1,000 kw.

a broadcast station is able to render is directly related to income. Any substantial decrease in income would materially reduce the grade and quality of the local and regional service provided by numerous stations in Michigan's Lower Peninsula. It is respectfully submitted that the Commission must consider the economic impact upon existing stations and service in weighing the super-power proposals.

3. There are many ways in which improved nighttime service can be provided without resorting to use of super-power. The most effective would be to relocate many of the existing clear channel stations. At the present time, many of the 50 kw clear channel stations are located in large cities such as New York City and Chicago and have almost identical service areas. Many of the 50 kw clear channel stations are located along the coasts and borders of the United States with the result that much of their signals are wasted over water and neighboring countries. Station WJR at Detroit is such a station. Use of directional antenna systems would greatly improve service to areas and populations in the United States. A 50 kw clear channel station in the north central portion of Michigan's Lower Peninsula would provide a much needed and unduplicated service throughout the rural areas of the state without adversely affecting existing stations. Congress intended such reallocation of facilities to accommodate ever changing conditions and needs when it enacted Section 9 of the Radio Act of 1927 and Section 307(b) of the Communications Act of 1934, as amended. The fact that the North American Regional Broadcasting Agreement is based, in part, upon existing locations of certain clear channel stations does not present any serious problems, and on most channels, no problems whatsoever. It is suggested that the Commission explore every alternative, including relocation of existing clear channel stations, operation with directional antenna systems, and duplication of clear channels at night before permitting any increase in powers above 50 kw.

[3763]

[Received June 1, 1960, FCC]

REPLY COMMENTS OF AMERICAN BROADCASTING COMPANY AND WLS, INC.

In its Third Notice of September 22, 1959, the Commission tentatively concluded inter alia: (1) That superpower is not the answer to the existing shortage of primary radio service in certain parts of the United States (paras. 9, 17) and that there is, therefore, no need to treat 50 percent of the Class I-A channels in one fashion and the other 50 percent in a different fashion (para. 13); and (2) that any additional assignments on the 23 Class I-A channels included in the Third Notice should be made with a view to producing a "minimum impact" on existing service (para. 12), and to that end the new operation on each of the Class I-A channels should install a directional antenna to protect the existing dominant station on the channel.

In comments filed April 1, 1960 American Broadcasting Company (ABC) and WLS, Inc. supported the foregoing tentative pronouncements of the Commission. A contrary position has been espoused in comments filed by certain other interested persons. To those contentions ABC and WLS reply as follows:

[3764]

I. Superpower

In comments filed August 15, 1958 challenging the piecemeal approach of the Further Notice, where the Commission proposed to "break down" 12 Class I-A channels and to reserve the other 12 for possible "superpower" use, ABC expressed doubts that superpower was economically, politically or socially expedient or desirable (p. 17). ABC questioned whether additional directionalized 50 kw skywave operations were feasible in the sparsely settled Rocky Mountain States and ventured the opinion that high-powered operations would siphon off revenues needed to support local stations in the less densely populated sections of the United States (pp. 19-24).

In its Third Notice (except for its different treatment of 660 kc and 770 kc) the Commission abandoned this piecemeal approach, stating that it was not persuaded "that the authorization of higher power would be in the public interest" (para. 17, cf. paras. 8-9). The engineering arguments there made against superpower are particularly cogent. While more power would improve the signal-to-interference radio, existing skywave service is generally satisfactory in winter but not in summer. To provide an equivalent noise-free service in summer would require a hundredfold increase in power to five megawatts. Furthermore, as there pointed out, the unsatisfactory nature of skywave service in summer is partially offset by the longer

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daytime periods, with a plethora of stations providing satisfactory groundwave service (para. 8).

Even if the foregoing engineering considerations standing alone do not require a rejection of superpower, there can be little or no question that equally persuasive economic, social and political factors further point to that same result. Operations in the order of 5 megawatts, needed to overcome atmospheric noise in summer, are of course not economically feasible. It has been authoritatively estimated that an increase of power to 750 kw would involve a capital outlay in excess of $500,000 and an increase in operating expenses of at least $250,000 annually. 1/ In fact, the chief proponent of superpower (CCBS) has estimated capital outlay requirements for 750 kw (nondirectional) at $565,000 to $1,146,000 and annual operating costs at $300,000 (Exhibit 341, Appendix G, Docket 6741). If expenditures in this order are to be warranted, stations operating with 750 kw must greatly augment their national and regional business. Since a fifteenfold increase of power would result in an increased signal intensity of almost four times that provided at any given point by a 50 kw operation, such stations can be expected to gain substantially greater audiences and improved listener ratings, and hence siphon off substantial amounts of national and regional business from lesser powered operations.

1/ Cf. Comments of Westinghouse Broadcasting Company, Inc. dated March 25, 1960 (Docket 6741, p. 7).

In many instances any curtailment of the regional and national business of a low-powered station, though representing only a small portion of its over-all gross, can spell the difference between a successful and a bankrupt operation. If a national or regional account can obtain wide-area coverage on a 750 kw operation, it has no incentive to go to the trouble and expense of placing such advertising on a large number of locally operated stations. Thus, any additional coverage resulting from action authorizing superpower would be more than offset by the disastrous impact which such operations would have on hundreds of existing low-powered local outlets -- dependent on some regional or national business for their survival.

With the Commission under a statutory mandate to provide a fair, efficient and equitable distribution of radio service among the several states and communities, and under a duty to provide local outlets in as many communities as possible (47 U.S.C. Sec. 307(b)), any blanketing of the United States with ten, fifteen, or twenty superpowered operations at the expense of local community "mouthpieces" 1/, is not in the public interest -- where (except perhaps for portions of Hawaii and Alaska) no part of the United States is without usable radio signals

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1/ Federal Communications Commission v. Allentown Broadcasting Corp., 349 U.S. 358, 362 (1955).

day or night (cf. Third Notice, para. 8). 1/

In this connection, those portions of the United States which are in most need of additional service are for the most part sparsely populated, with the result that any placement of superpower stations in those areas or at places where their signals will penetrate into those areas will have an even more direct and devastating impact on small-town operations. The social and political consequences of a policy which makes those areas dependent on radio service from distant metropolitan centers in a different state need not be emphasized to this Commission.

In short, to the degree that any portions of the United States are still without a choice of multiple radio signals, either day or night, "superpower" on some 23 channels is not the answer -- because of the devastating impact on such operations on some 3400 stations licensed on the remaining 84 AM frequencies.

1/ It is not without significance that CBS, which argued for higher power in response to the "Further Notice" of April 15, 1958, now agrees that superpower should not be permitted, provided the skywave service of existing Class I-A stations is "adequately protected".

II. Interference to the Dominant Stations

In its Comments in response to both the Further Notice and the Third Notice, ABC has expressed its agreement with the Commission's repeated assertions that any improvement in nighttime radio coverage "must come from additional or augmented *skywave* service" on the clear channel frequencies (Further Notice, para. 42); that "the service gains to the needful areas of the West" (Further Notice, para. 56) would not be achieved by the indiscriminate granting of skywave stations in the west "at the sacrifice of primary coverage in eastern areas where there is a definite deficiency of primary service" (Further Notice, para. 75); and that any additional assignments on the remaining 23 Class I-A channels should be made with a view to producing a "minimum impact" on existing services (Third Notice, para. 12), and to that end the new operations on each of the 23 Class I-A channels involved in the Third Notice should install a directional antenna to protect the existing dominant station on the channel. 1/

It was for these reasons that ABC has contended that the Commission is chasing a "will o' the wisp" if it is breaking

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1/ Needless to add, it is ABC's view that a similar policy should prevail with respect to 770 kc, a channel not included in the Third Notice. Apparently the Court of Appeals is of a similar view. American Broadcasting-Paramount Theatres, Inc. v. Federal Communications Commission, decided May 27, 1960 (Case Nos. 15,399 and 15,400), slip op. pp. 8-9.

[3769]

down clear channels with a view to providing additional "primary service" to sparsely populated areas. Since 10 kw directionalized operations in the Rocky Mountain States will provide little or no skywave service, and since this area cannot support costly high-powered directional operations where "primary service" is most needed, ABC has questioned the wisdom of "earmarking" a dozen or more clear channels for 10 kw Class II operations in the Rocky Mountain region.

As brought out in comments by CCBS (Exhibit 101), the capital outlay for a 10 kw directionalized operation will exceed $130,000. The Rocky Mountain regions most in need of additional "primary service" will not support twelve such stations, as proposed in the Third Notice, except by sacrificing existing lesser power operations. Accordingly, ABC has suggested that consideration be given to authorizing 50 kw operations on eastern clears in the larger metropolitans centers on the Pacific Coast -- and in that way providing (1) needed primary service in those states and (2) some additional skywave in the Rocky Mountain states, without disrupting local broadcast operations in those sparsely settled regions.

Accordingly, like KFAC, ABC supports the Commission's proposal that 830 kc be broken down for duplication in California or Oregon.

While in agreement that 50 kw directionalized operations should be permitted in the Pacific Coast states on certain other

[3770]

eastern clears, ABC questions the attempt of KBIG to utilize Docket 6741 as a means of remedying that station's interference problems with KCBS. KBIG's suggestion that KCBS be shifted to 760 kc in San Francisco or that 760 kc be utilized in "southern California" by KBIG presents problems which KBIG conveniently ignores. KABC presently operates on 790 kc in Los Angeles, thus precluding the use of a channel 30 kc removed in that city. Earmarking that channel for KBIG, or any other channel for a given applicant, is contrary to the entire spirit and purpose of Docket 6741. ABC long ago suggested, if 770 kc be broken down, that it should be broken down on opposite coasts. In fact, KABC filed for 770 kc in Los Angeles in 1944, but its application was not accorded comparative consideration with a proposal for a breakdown of 770 kc in Albuquerque. KBIG's proposal that 760 kc be utilized in the Los Angeles area would of course preclude a rectification of the Commission's failure in 1944 to accord KABC an Ashbacker hearing on its application (then co-pending with KOB) for 770 kc, inasmuch as 770 kc and 760 kc could not both be used in and around Los Angeles. Thus, if 760 kc is to be allocated to "southern California", as KBIG requests, it should be allocated to that region for all comers in furtherance of the objectives of Docket 6741 and not for the rectification of so-called "interference problems" between existing licensees.

[3771]

Since the Commission itself has chosen to date not to include 770 kc in its Third Notice, ABC makes no comments at this time on WMC's proposal that 770 kc be further duplicated in Memphis, Tennessee.

Respectfully submitted,

AMERICAN BROADCASTING-PARAMOUNT
THEATRES, INC.

By Mortimer Weinbach
7 West 66th Street
New York 23, New York

/s/ James A. McKenna, Jr.
/s/ Vernon L. Wilkinson
1735 DeSales Street, N.W.
Washington 6, D. C.
Its Attorneys

June 1, 1960

[3816]

[Received June 1, 1960, FCC]

REPLY OF MIDWEST RADIO-TELEVISION, INC TO COMMENTS OF CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM (THIRD NOTICE)

Midwest Radio-Television, Inc., (WCCO), Minneapolis, Minnesota, by its attorneys, replies to the Comments filed in these proceedings by City of New York Municipal Broadcasting System (WNYC), as follows:

1. A worse possible use of the 830 kc clear channel facility cannot be imagined than that proposed by WNYC in its Comments - namely, that it be broken down to provide still another groundwave service to part of New York City.

2. WCCO is the I-A Station licensed to 830 kc, fulltime, with 50 kw, in Minneapolis, Minnesota. WNYC is a limited-time Station in New York City, licensed to operate on 830 kc with 1 kw from local sunrise until sunset at WCCO. In Comments dated April 1, 1960 in these proceedings, WNYC seeks to have some avenue opened up for nighttime operation by it in New York City - on 830 kc among other possibilities.

3. In its Further Notice of Proposed Rule Making of April 15, 1958, the Commission determined that the best way of improving rural broadcast service to needful areas was to increase

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the power of the fulltime stations on 12 Class I-A channels; and it proposed to preserve the present condition of permitting but one fulltime operation on those channels until such an increase in power could be considered. The frequency 830 kc was selected as one of those 12 channels. In its Third Notice, the Commission has proposed that all I-A channels be broken down to provide one additional groundwave Class II service on each - in California on 830 kc. In its Comments (dated April 1, 1960) on the Third Notice, WCCO showed that insofar as 830 kc at least is concerned, the breakdown suggested is the worst of all possible uses of a scarce natural resource - that 750 kw for WCCO will provide the greatest gains in service to needful areas, but that in any event the status quo is superior to a breakdown with even the optimum assignment of a Class II station in California which gains so little and loses so much.

4. WNYC, in its present Comment - by proposing an additional fulltime Class II assignment on 330 kc, in a locality that already has the most groundwave service of any place in the country - would compound the losses of a breakdown of the channel for a California station and completely nullify the possibility of using one of the few mediums available to increase service to those who need it.

5. Actually, WNYC's demand for a fulltime assignment is not limited to 830 kc. It is obviously a matter of indifference to WNYC what frequency is used, just so long as such an assignment is provided. "It is not essential that WNYC continue to operate on 830 kc", says WNYC, "the only real essential with respect to WNYC is that it be authorized to operate on some frequency, on a fulltime basis, with sufficient power to render adequate service to New York City (Comments of WNYC, par. 5 - emphasis added).

6. This buckshot approach, of course, merely reflects the patent weakness of any suggestion that 830 kc be "broken down" in order to provide WNYC with nighttime facilities. For, it is difficult to conceive of a proposal which is less meritorious when tested by the basic objective of the clear channel proceeding to improve and increase service to those who need it.

It is the avowed aim of the present proceeding to change the long-established allocation plan for AM channels to the extent and only to the extent that such a change will improve and increase an efficient and equitable distribution of radio service upon a national basis. A change in the status of Clear Channel I-A frequencies can be justified only if it will produce a net increase in service to those people and areas which are relatively deficient in service. It is easy enough to create a new groundwave service by breaking down a clear channel, if the service (skywave and/or groundwave) of the I-A station which will thereby be lost is ignored. But it is one of the salient - and ineluctable - facts of radio propagation, as the Commission has repeatedly recognized (e.g., 17 RR 1669, 1670), that broadcast signals "cause destructive interference over an area much greater than that to which they provide useful service" (par. 3). Authorization of a new nighttime service is plainly not in the public interest, if

"the population which would gain service" from the new operation "is vastly exceeded by the population which would lose service of existing stations" (Ibid., par. 56) (emphasis added) especially, if the former already have more service than the latter.

7. It is just (1) because the WNYC suggestion that 830 kc be broken down is so wantonly destructive of broadcast service on an overall basis and (2) because the people who would lose service under it are vastly more deficient in service than those who would gain service, that its proposal must be denied. Contrary to WNYC's contention (Comments, par. 7) that none of the country's white areas exist in the region where WNYC's night operation would interfere with WCCO's skywave service, half-a-million people in the latter region have no primary service at all, and well over a million have but one such service (see 9 FCC 169; Docket 11227, WNYC Ex. 1, 6 (Figs. 4, 5, 5A). Moreover, such interference from WNYC would deprive not only substantially in excess of 25,000,000 people over an area of hundreds of thousands of square miles of WCCO's present secondary service (see WCCO, Ex. 4 (Fig. 6A) Docket 11227), but even 8,000,000 people within WCCO's 0.5 mv/m-50% skywave contour in nine States in the Midwest.

8. What is the gain in service relied upon to justify this overwhelming loss of service to needful areas? That gain is restricted to adding but one more primary service to a few square miles in parts of Manhattan and other New York City Boroughs. Not only does the population in this small area already have the most local AM stations (17) and services - not to mention 13 FM

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and 7 TV stations and services - of any place in the country, but within a few minutes ride are concentrated the greatest number and diversity of entertainment and cultural opportunities and facilities of any place in the world. Plainly, WNYC's suggestion would seriously reduce rather than promote the efficient and equitable distribution of service which it is the Commission's purpose to achieve by the present clear channel proceedings. To adopt WNYC's proposal would be to take service from the "have-nots" in order to give it to the "haves". And so the Commission has already decided after extensive hearings (9 FCC 169). Even the extension of hours to daytime stations to provide "the *only* primary service" - a highly desirable objective - must be denied, the Commission has recently stressed, where "the losses in service which would result . . . far outweigh the gains . . . . This objective should not be reached by changing the AM allocation rules so that an inefficient use of broadcast facilities would result . . . ." (17 RR 1669, 1688, 1690) (pars. 47, 49). *A fortiori* must such a result be avoided where it would also produce, as here, a *grossly inequitable* distribution of service.

9. Without even a semblance of support for a breakdown of 830 kc among the factors directly related to the issues posed by the clear channel proceeding, WNYC is relegated to relying upon two fallacious arguments which are, moreover, irrelevant to those issues:

First, that the Commission, by granting WNYC a Wartime SSA for operation for a few hours beyond its licensed hours, and extending that authority from time to time since the War pending the disposition of the Clear Channel case, has committed itself to provide WNYC with a fulltime assignment upon a regular basis;

Second, that WNYC's program service to part of the several million residents in New York City is so valuable and so unique, that its rendition on a fulltime basis should be brought about regardless of the injury to the rest of the country.

10. The first argument of WNYC - an attempt to raise itself by its own bootstraps - is, of course, based upon a wholly incorrect and improper interpretation of the temporary and extraordinary authority issued to WNYC because of special circumstances (see par. 11, below). And the second - the merit of WNYC's programming - is wholly beside the point on an issue of breaking down one of the few Class I-A channels in a legislative proceeding dealing with basic engineering principles of allocation to provide optimum nation-wide service (see par. 12, below).

11. WNYC's SSA: (a) Contrary to WNYC's first argument, there is nothing in the special temporary authorizations to WNYC to operate beyond its licensed hours - originating in Wartime conditions - which lends any support, let alone commits the Commission, to a regular, fulltime, assignment for WNYC on any frequency, much less a Class I-A channel. This is made perfectly clear by the Commission by the authorizations which have been granted, as well as those which have been denied, for nighttime operation by WNYC. For WNYC has been uniformly and expressly

denied the very regular, fulltime assignment on 830 kc to which it now claims the Commission is in some way impliedly committed (see Files BML-207, BML-629). Thus, after extensive evidentiary hearings, proposed findings, proposed decision, exceptions and oral argument before the Commission en banc, in October 1942 the Commission denied an application by WNYC for regular authority to operate at night upon 830 kc (9 FCC 169). The grounds of that denial are the grounds upon which the present request for a breakdown of 830 kc must now be denied as contrary to the public interest, namely, that from the national point of view, the losses in service from such an operation of WNYC at night far outweigh any gains and would be inconsistent with a fair, equitable and efficient distribution of service on a national basis (see par. 5, above).

(b) WNYC's request for a Wartime SSA to operate between 6 AM and 10 PM (EST) on 830 kc (in order to render "needed wartime" services) followed hard upon the heels of that denial and was granted shortly thereafter on the basis of WNYC's own request that the authorization be expressly conditioned so it could be terminated at any time by the Commission "without advance notice or hearing" (BSSA-52). Certainly there is nothing in this special, limited and temporary authorization which can be construed to commit the Commission to provide WNYC with a regular, fulltime authorization upon 830 kc or any other frequency.

(c) Nor can such commitment be read into the short-term extensions of the SSA (never granted for more than six

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months, and since 1951, extended only for 2-month periods) successively granted WNYC since the War, pending resolution of this Clear Channel proceeding. When WNYC's Wartime SSA expired in 1946, a final decision in the Clear Channel proceeding was imminent. Since this proceeding involved the question of which, if any, clear channels should be broken down, the Commission extended WNYC's SSA for six months or until the earlier conclusion of this proceeding; and it added an express condition to the SSA that the authorization would be "cancelled immediately" if this Clear Channel proceeding were decided without breaking down 830 kc (BSSA-145, 199). Nothing in this record can possibly be taken to show that the Commission has committed or intended to commit itself to provide WNYC with a regular, fulltime assignment on 830 kc or any other frequency.[1] The plain fact of the matter is that the temporary extensions of WNYC's Wartime-originated SSA have, and were intended by the Commission to have, no relevance whatever to the merits of the question of whether 830 kc should be broken down in the current legislative proceeding to permit fulltime operations on the Class I-A 830 kc channel in addition to that of WCCO.

12. WNYC's Programming: WNYC contends that the

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1. Nor can any such reading be given, as WNYC attempts, to the dismissal by the Commission of WNYC's 1949 application for a regular nighttime authorization on 830 kc (5 RR 1298) on the established procedural grounds that such an application would not be entertained during the pendency of the Clear Channel proceeding (1 RR 53: 902, 903).

excellence of its programming creates such a compelling need for its service that some fulltime assignment for WNYC - on 830 kc or some other frequency - should be provided by the Commission (Comments, par. 8).[1] It is submitted that if WNYC should be entitled to any relief on this ground, it has completely misconceived the appropriate relief. In any event, its programming argument is wholly inadequate to justify breaking down the service to extensive rural areas of one of the best located Class I-A stations.

(a) In the first place, programming of a particular station - WNYC or any other - is wholly insufficient to support a major feature, or change, in the basic allocation structure. The Commission is charged with effecting a "fair, efficient and equitable" distribution of broadcast service. And, as shown above (pars. 7, 8), to give WNYC relief by breaking 830 kc down would cause a redistribution of service which is neither "fair" nor "efficient"; such a course would result in an overwhelming net loss of service - with the losers already having much

less service than the New Yorkers who might benefit from a nighttime service by WNYC.

Such considerations, rather than any asserted merits of WNYC's programming, must plainly govern. If the asserted need for a particular type of programming in a given city were sufficient to justify an assignment regardless of the interference to service elsewhere the complete elimination of all skywave service and therewith the complete destruction of all service to many millions of people could easily follow. And to what avail? The only benefit that will be realized will be confined to people like Manhattanites who already enjoy a plethora of service. The many tens of millions of people who would lose WCCO's service, for example, will not benefit one whit from any increase in the operating hours of WNYC, for they reside far beyond the reach of WNYC's interference-free nighttime signal which is limited to part of New York City.

Moreover, the loss of service to the broad areas across the country would be permanent and irrevocable; but any

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1. In weighing WNYC's claim to an "extraordinary, unique and essential" programming service, it should be borne in mind at all times that not only does New York City have more opportunities and facilities for educational, cultural and related pursuits than any other place on the globe, but that well over 70% of the actual programming which WNYC has rendered during nighttime hours under the SSA (see Docket 11227, WNYC Exhibits 11-24, 11-29 (page 2), 11-30) has been devoted to a field - good music - of which there is a great abundance in New York City in the form of concerts, opera and the like, as well as broadcasts, live and recorded - AM, FM and TV. Moreover, authoritative audience surveys show that only a small fraction of one percent of the radio listening in New York City is devoted to WNYC (see Docket 11227, WCCO, Exhibit 36, Tr. 1797-1801).

gain which part of New York City may derive is temporary and limited to the duration of the present type of programming by WNYC. WNYC, or any other station, may change its programming at any time - for worse or better. Economy in municipal affairs may dictate, at any time, a reduction in service, or, as in the case of most municipally-owned stations in the past, a sale of the station to an entirely different kind of an operator.

Thus, the benefits to the limited areas

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which may be expected from the extension of a particular type of programming may well prove entirely illusory.[1] The programming of any particular operator, or even of a particular station - no matter how meritorious or apparently essential to its area at any given time - is obviously too transitory a factor to be persuasive in determining the basic allocation of broadcast facilities.

As the Commission has so pointedly said in the recent KOB case, "Engineering considerations" - not program matters - are "paramount". (Albuquerque Broadcasting Comapny, 25 FCC 683, 785). In words precisely applicable here, the Commission said,

> "It is evident from the nature of this proceeding, which requires the resolution of a problem involving a fundamental and far-reaching allocation of frequencies and facilities affecting vast areas and populations, that such nonengineering considerations, the subject matter of which is essentially transitory and subject to change at the will of the broadcaster, must necessarily be of secondary importance compared to engineering considerations - the areas and populations which would receive or be deprived of service, and the amount of other service available to such areas and populations, under the various possible modes of operation to be considered herein. (Ibid., 25 FCC at 769).

Again, program

> ". . . considerations cannot properly constitute the basis for a basic allocation such as the one involved

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1. Of course, any breakdown of 830 kc or any other clear channel in the present legislative proceeding on the basis urged by WNYC may well prove completely abortive for another reason. At the adjudicative stage, a fulltime application for another area than New York City (say some of the white area in Pennsylvania) which is mutually exclusive with that of WNYC may have to be preferred on established 307(b) grounds.

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> herein. The commission's allocation scheme is designed to bring broadcast service - primary service if possible, and secondary service as well - to as large a part of the population as possible. The engineering facts involved in such an allocation are permanent, not subject to change. This is likewise true of the assignments involved. Therefore, assignments of this character should not be subject to such ephemeral considerations as programming . . . ." (Ibid., 25 FCC at 787, 88).

(b) In the second place, there are other courses to which WNYC may properly resort in order to provide a fulltime broadcast service to New York City. And these other courses will produce a net gain in service. Accordingly, they are as appropriate as the breakdown of 830 kc - entailing the taking of service from the many service-poor to give it to the few service-rich - is improper. Indeed, the ready availability of two such courses makes such a breakdown doubly unjustified.

(i) Broadcast facilities available and now used in New York City may be reassigned to provide WNYC with fulltime if it can show it will make better use of such a facility. Whatever need New York City may have for the special type of programming WNYC proposes to render is a problem local to

New York. And whatever benefits WNYC may confer by operating fulltime will likewise be restricted to New York City. Accordingly, it is not only appropriate but necessary to find a solution to that local problem which will not disrupt basic allocation policies in a manner injurious to the country as a whole. If, as WNYC contends, there is a greater need in New York City at night for the type of programming it wishes to provide than there is for that provided by other New York stations, then the appropriate course is for

WNYC to seek the fulltime facility of one of such stations. In this manner, there would be a net gain in service to New Yorkers with no offsetting loss of service to people over the rest of the country. Obviously, if service is to be taken from anyone to permit WNYC to operate at night, the public interest requires that the necessary readjustment affect New York services and facilities alone and not result in the tremendous loss of service to people elsewhere which a breakdown of 830 kc would cause. Indeed, the 3-year limitation on broadcast licenses is bedded in just such considerations.

(ii) FM broadcast facilities provide a medium for as great and potentially a much greater coverage of and service to New York City than would fulltime operation on 830 kc. In view of the limitation upon WNYC's groundwave from WCCO, at night, WNYC's AM station would serve but half of the population of the City of New York living in less than a third of the area of the five Boroughs (see Docket 11227, WNYC Ex. 4, WCCO, Ex. 4). On the other hand, WNYC's FM station provides coverage to all of New York City and its adjacent areas at night as well as during daytime. Moreover, more than two years ago, half of New York's families already had FM receivers(Docket 11227, Tr. 659, 665). And FM set circulation is increasing by leaps and bounds. Finally, not only would WNYC-FM and WNYC (AM) substantially duplicate each other's entire program schedule (Docket 11227, Tr. 503-4, 525) but FM, with its high fidelity, is a far superior medium for the "classical" music programming upon which WNYC concentrates. Exploitation of FM, therefore, presents the double advantage over suplicating 830 kc of broader and

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superior nighttime service to New York City and a net gain rather than a serious net loss of service, nationally. In recently denying extended hours to daytime stations on clear (and other) channels - *even where there is no local service* - because of the net loss of service as a whole, the Commission made certain restrained comments which are particularly *a propos* here:

> ". . .other methods are available to bring locally originated nighttime radio services to the 913 communities now without such service. . . the daytime stations might consider constructing and operating FM stations. As shown by data in the record, FM stations can give much greater coverage of the communities and surrounding areas during night hours than that obtainable from a daytime-only station subject to the limitations which would prevail. It is reasonable to assume that the public would purchase FM receivers if there is sufficient unsatisfied need for radio services in those communities." (Docket 12274, Report and Order of September 19, 1958, footnote 19: 23 Fed.Reg. 7496, 17 RR 1669, 1690-91)

Actually, the Commission does not fully indicate the tremendous recent growth of FM set circulation, especially in the major metropolitan centers like New York.

In conclusion, therefore, there is absolutely no justification for breaking down 830 kc to permit a fulltime assignment in New York City. Such a course would cause tens of millions of people (many of whom are deficient in service) to lose service from one of the most advantageously located of all Class I-A stations to exploit its clear channel facility. And to what end: Merely to provide some New Yorkers with yet another primary service at night. Such an inequitable and inefficient redistribution of a national broadcast facility is especially indefensible, since WNYC not only has available to it the facilities for wider coverage, greater audience and superior service of FM, but a reassignment of local AM facilities in New York City to provide a nighttime AM outlet for any really needed service.

The proposal of WNYC to break down 830 kc to provide another groundwave in New York City has even less merit than the other proposals to break it down to provide groundwave services in the Los Angeles and San Diego areas. None of them would advance the basic objective of these proceedings one whit. All of them should be rejected.

Respectfully submitted
MIDWEST RADIO-TELEVISION, INC.
By /s/ Peter Shuebruk
Fly, Shuebruk, Blume and Gaguine
30 Rockefeller Plaza
New York 20, New York
Its Attorneys

June 1, 1960

[4013]

[Received July 28, 1961, FCC]

OPPOSITION OF THE GOODWILL STATIONS, INC TO PETITION FILED JULY 25, 1961 BY JOHN POOLE BROADCASTING, INC. (KBIG, AVALON, CALIFORNIA)

The Goodwill Stations, Inc. (formerly WJR, The Goodwill Station, Inc.), by its attorneys, hereby opposes the petition filed herein on July 25, 1961 by John Poole Broadcasting Company, Inc. In support thereof, it is stated as follows:

1. The Goodwill Stations, Inc. is the licensee of Class I-A Clear Channel standard broadcast station WJR, which operates on 760 kc at Detroit, Michigan. WJR, individually and as a member of Clear Channel Broadcasting Service (CCBS), has been a party to the instant proceeding from the outset.

2. John Poole Broadcasting Company, Inc. is the licensee of KBIG, which operates on 740 kc at Avalon, California.

3. The instant petition of KBIG includes matter which is in the nature of further comments in reply to the Commission's September 22, 1959 Third Notice of Further Proposed Rulemaking, released herein on September 22, 1959 (FCC 59-972). The instant petition requests that the further reply comments tendered as part of the petition be accepted for consideration in spite of the fact that paragraph 18 of the Commission's September 22, 1959

[4014]

Third Notice and subsequent Orders (FCC 60-455, released February 19, 1960 and FCC 60-422, released April 22, 1960) provided that comments in response to the Third Notice had to be filed on or before April 1, 1960 and that reply comments had to be filed on or before June 1, 1960.

4. The further reply comments tendered as part of the KBIG petition (characterized by KBIG as "Supplemental Comments:) should be rejected as untimely filed in view of the provisions of Rule 1.313(d)

for breaking down 830 kc to permit a fulltime assignment in New York City. Such a course would cause tens of millions of people (many of whom are deficient in service) to lose service from one of the most advantageously located of all Class I-A stations to exploit its clear channel facility. And to what end: Merely to provide some New Yorkers with yet another primary service at night. Such an inequitable and inefficient redistribution of a national broadcast facility is especially indefensible, since WNYC not only has

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available to it the facilities for wider coverage, greater audience and superior service of FM, but a reassignment of local AM facilities in New York City to provide a nighttime AM outlet for any really needed service.

The proposal of WNYC to break down 830 kc to provide another groundwave in New York City has even less merit than the other proposals to break it down to provide groundwave services in the Los Angeles and San Diego areas. None of them would advance the basic objective of these proceedings one whit. All of them should be rejected.

Respectfully submitted
MIDWEST RADIO-TELEVISION, INC.
By /s/ Peter Shuebruk

Fly, Shuebruk, Blume and Gaguine
30 Rockefeller Plaza
New York 20, New York

Its Attorneys

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4. The further reply comments tendered as part of the KBIG petition (characterized by KBIG as "Supplemental Comments:) should be rejected as untimely filed in view of the provisions of Rule 1.313(d)

which provide that following the expiration of the date for filing reply comments:

> "No additional comments may be filed unless specifically requested by the Commission or authorized by it."

5. It is clear that the Commission has not "specifically requested" the filing of additional comments. It is equally clear that the Commission should not "authorize" the filing of the further reply comments tendered by KBIG as KBIG has failed to advance any reason to establish that good cause exists for the acceptance of the tendered supplemental comments.

6. The main thrust of the further reply comments tendered by KBIG is that the Commission should not authorize KFMB, San Diego, California, to operate fulltime on 760 kc as this would result in drastic interference to KBIG in view of the fact that there would be an overlap between the 2 and 25 mv/m contours of KBIG, operating on 740 kc, and KFMB, operating on 760 kc, in violation of Rule 3.37. In the alternative, KBIG requests that it be assigned to 830 kc in the event KFMB is assigned to 760 kc.

7. For the reasons set forth in previous pleadings filed by WJR and CCBS, WJR agrees with KBIG that KFMB should not be authorized to operate fulltime on 760 kc. As pointed out specifically in its Reply Comments filed on June 1, 1960, one of the reasons KFMB should not be authorized to operate fulltime on 760 kc is the resultant overlap of the 2 and 25 mv/m contours of KBIG and KFMB and the violation of Rule 3.37 (see pages 4-6 of the WJR June 1, 1960 Comments). Accordingly, the KBIG-KFMB overlap matter referred to in the tendered KBIG comments is already set forth in pleadings timely filed herein.

8. It is equally clear that no basis exists for accepting for consideration the alternate request of KBIG that it be assigned to

830 kc in the event KFMB is assigned to 760 kc. In its April 1, 1960 Comments, KBIG requested that it be authorized to operate fulltime on 760 kc (see pages 6-8 of WJR's June 1, 1960 Reply Comments). Now, it attempts, without justification, to have considered an alternate request that it be authorized to operate fulltime on 830 kc.

9. If the KBIG further reply comments are accepted for consideration, it is submitted that the Commission should reject the proposals of KFMB and KBIG that each be authorized to operate fulltime on either 760 kc or 830 kc. The reasons dictating against any further breakdown of any Class I-A Clear Channel frequency are fully set forth in the Comments filed previously herein by WJR and CCBS. The fact is that operation of either KFMB or KBIG on either 760 kc or 830 kc (or any other Class I-A Clear Channel frequency) would degrade rather than improve service to "white" areas. As established conclusively in the various comments filed previously herein by WJR and CCBS, substantial land areas of the continental United States (some 57.99%) in which substantial populations reside (some 25.6 million people) do not receive a single adequate nighttime groundwave service. These white areas and populations must depend upon skywave service if they are to receive any nighttime radio service. Additional millions of persons residing in rural and small-town America are dependent upon skywave service for any choice of nighttime radio service.

10. It is beyond dispute that because of the physical laws of nature and the population distribution over the land area of the United States, it is impossible to provide a nighttime groundwave service to all areas of the continental United States. Accordingly, any change in the present allocation scheme in the standard broadcast band must recognize that existing nighttime skywave service must be retained at the very minimum and must be improved if any relief is to be

brought to the millions of persons presently living in underserved areas. It is for this reason that WJR and CCBS have advocated throughout the course of this proceeding that each and every one of the too few remaining Class I-A Clear Channel frequencies must be kept free of nighttime duplication and each of the Class I-A Clear Channel stations should be authorized to operate with power in excess of 50 kw.

11. The duplications proposed by KFMB and KBIG (and those proposed in the Commission's June 13, 1961 Instructions) would not result in any significant additional nighttime skywave service to white areas and populations. If any nighttime duplication is permitted on any Class I-A Clear Channel, past history shows that "creeping paralysis" (the assignment of additional fulltime stations) would set in with the result that additional groundwave services would be provided to well served city areas at the expense of taking skywave service away from underserved areas and prohibiting forever the only feasible means of improving skywave service to white areas and populations, namely an increase of operating power for Class I-A Clear Channel stations. Here KFMB and KBIG seek to bring additional groundwave services to the well served cities of Los Angeles and San Diego.

12. The instant proceeding was initiated on the Commission's own motion in 1945 because of the recognized need to improve service to white areas and populations. This can be done only by improving the amount and the quality of (in terms of signal strength) nighttime skywave service. The KFMB and KBIG proposals should be rejected since they would reduce rather than improve nighttime skywave service to underserved areas. As shown in the pleadings timely filed herein by WJR and CCBS, the only feasible means of improving significantly nighttime skywave service to areas in need of service is to retain inviolate each of the existing Class I-A Clear Channel frequencies and to authorize Class I-A Clear Channel stations

to operate with power in excess of 50 kw.

[4018]

WHEREFORE, the premises considered, it is respectfully requested that the instant Petition for Leave to File Supplemental Comments be denied, or in the alternative, that the instant Supplemental Comments be denied as lacking in merit.

Respectfully submitted,
THE GOODWILL STATIONS, INC.
By /s/ Reed T. Rollo (per RRE)
/s/ Percy H. Russell (per RRE)
/s/ R. Russell Eagan
of
Kirkland, Ellis, Hodson, Chaffetz & Masters
800 World Center Building
Washington 6, D. C.
Its Attorneys

July 28, 1961

[4019]

[Certificate of Service]

[4081]

[Received September 8, 1961, FCC]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Committee on Interstate and Foreign Commerce
Room 1334, House Office Building
Washington, D. C.

September 7, 1961

Honorable Newton N. Minow
Chairman
Federal Communications Commission
Washington 25, D. C.

My dear Mr. Chairman:

I have your letter of September 6, 1961, in response to copy of my letter of September 2 to Congressman Dingell, with reference to the Clear Channel proceeding. I am glad to have the clarification as to the status of the proceeding before the Commission.

Yesterday, September 6, this matter was raised in an executive session of the Committee on Interstate and Foreign Commerce. A great deal of interest was expressed by members of the Committee. I explained to the Committee the status, as you have given me by telephone and confirmed by your letter.

The Committee directed me, as Chairman, to transmit to the Commission a letter requesting postponement by the Commission final order concluding the Clear Channel proceeding (Docket 6741) until the expiration of a reasonable time after the reconvening of the Congress in January 1962. This request is made in order to give the Committee an opportunity to give consideration to the matter and probably conduct some hearings on several bills which have been introduced and referred to the Committee affecting Clear Channel operations (H. R. 8210 by Mr. Dingell, H. R. 8211 by Mr. Flynt, H. R. 8228 by Mr. Bennett of Michigan, H. R. 8274 by Mr. Loser).

This problem has only recently been called to my attention. I have, therefore, not had an opportunity to schedule any hearings or other consideration on it during this session. In view of the fact that proposed legislation would be in conflict with an order in Docket 6741, under

[4082]

preparation by direction of the Commission in accordance with its Public Notice 6295 of June 13, 1961, the Commission is urgently requested to defer final action until the Committee and the Congress have had a reasonable opportunity to consider the pending legislation.

It would be my purpose to schedule Committee consideration of it early in the next session. The cooperation of the Commission would be greatly appreciated.

By direction of the Committee.

Sincerely yours,
/s/ Oren Harris, M.C.
Chairman

Orig: Ken Cox
Copy hand carried to
each Commissioner for info.

[4083]

September 13, 1961

Honorable Oren Harris
Chairman, House Interstate and Foreign
Commerce Committee
House of Representatives
Washington 25, D. C.

Dear Chairman Harris:

This is in reply to your letter of September 7, 1961, with regard to the Clear Channel proceeding (Docket No. 6741).

As you know, the Clear Channel proceeding has been pending before the Commission for over 16 years (since February 20, 1945). In its earlier stages, extensive hearings were held, which have been supplemented throughout the entire period by voluminous written comments. This proceeding involves matters of great technical complexity, including basic policy questions as to the most effective use of the frequencies presently allocated to standard radio broadcasting; this country's international commitments with respect to these frequencies; and the marked changes in radio broadcasting which have taken place in recent years.

After long and careful deliberation, the Commission has reached a result which a substantial majority of its members consider to be the best possible solution to the very difficult problems here involved, taking full account of all the evidence and arguments which have been presented to it over the past sixteen years. Under the circumstances and particularly in light of the fact that on June 12, 1961, prior to learning of the concern of the Committee in this matter, we publicly announced the basic features of the decision we had reached, the Commission regrets that it is unable at this late stage in the proceeding to delay final adoption of the Report and Order in Docket No. 6741. The Commission has therefore adopted its final Report and Order in this matter concurrently with its authorization of the dispatch of this letter to you.

[4084]

Implementation of the Commission's decision in Docket No. 6741 will require time, and it is probable that petitions for reconsideration will be filed by advocates of many of the positions heretofore urged upon us. Additional time will be required to dispose of these, and, in our judgment, there is no possibility that applications for any of the proposed Class II stations authorized to operate on existing clear channels can be granted within the next six months -- and probably not for a substantial period thereafter. As a consequence, it would appear that ample time will be available for the Committee to hold hearings on this problem early in the next session if it concluded that such a course would be in the public interest. This would provide an opportunity for Congressional action if you and your colleagues should conclude that legislative action is warranted. Meanwhile, however, the Commission feels that it must press forward to a conclusion of this long-pending proceeding in the manner which, in its best judgment, appears to be most in the public interest. Having thus discharged its responsibilities, the Commission will welcome study of its action by your Committee and will, of course, be most happy to cooperate in any way that it can.

I am enclosing herewith a copy of this letter and a copy of the Report and Order for each member of the Committee.

BY DIRECTION OF THE COMMISSION

/s/ Newton N. Minow
Chairman

Enclosures

Adopted by Commission September 13, 1961, Executive Agenda.

(Initials) ACH

[Hand carried by
Bob Greenberg - 9/14/61]

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,498

THE GOODWILL STATIONS, INC., Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

No. 17,499

WGN, INC., Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

No. 17,500

THE GOODWILL STATIONS, INC. and WGN, INC., Petitioners,

v.

UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION, Respondents,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

[illegible]
[illegible]

[illegible]

VOLUME II

Pages 323 - 653

FILED MAR 1 1963

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,498

THE GOODWILL STATIONS, INC., **Appellant,**
v.
FEDERAL COMMUNICATIONS COMMISSION, **Appellee,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

No. 17,499

WGN, INC., **Appellant,**
v.
FEDERAL COMMUNICATIONS COMMISSION, **Appellee,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

No. 17,500

THE GOODWILL STATIONS, INC. and WGN, INC., **Petitioners,**
v.
UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION, **Respondents,**
TRANSCONTINENT TELEVISION CORP., et al., **Intervenors.**

Appeals from and Joint Petition to Review and Set Aside
Orders of the Federal Communications Commission

JOINT APPENDIX

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[4085]

REPORT AND ORDER

By the Commission: Commissioner Lee dissenting and issuing a statement; Commissioner Cross concurring in part and dissenting in part and issuing a statement.

* * * * *

[4086]

Introduction

1. The basic question in this proceeding is whether and in what manner it would serve the public interest to amend the rules governing the use of the standard broadcast frequencies designated as "clear channels." The proceeding was instituted by the Commission on February 20, 1945, largely as a result of insistent claims that the clear channel concept of permitting only one station to operate at night on 24 of the 107 channels available for standard broadcasting is wasteful of valuable spectrum space and otherwise not in the best interests of efficient utilization of the frequencies involved. Resolution of the matter has been complicated during the intervening years by changing treaty obligations, the necessity for disposing of precedent collateral problems, themselves difficult of settlement, and by marked changes in the socio-economic climate for a standard broadcast medium beset by the emergence of television as a vigorous competitor for audience, program material, and advertiser support. Proposals for settlement have been narrowed by the Commission's "Further Notice" of April 15, 1958, and a "Third Notice" adopted September 18, 1959. The course we take today marks our best judgment of the most practicable manner in which the clear channels can, at this stage, be better utilized to improve service in the standard broadcast band.

History of the Proceeding

2. Pursuant to long-standing practice and international agreement for the North American region, all United States standard broadcast stations are assigned to 107 channels, each 10-kilocycles wide, in the frequency range 535-1605 kilocycles. Unlike television, where channels were from the outset tied to specific cities, the practice of assigning standard broadcast stations to meet random demand emerged early in the development of the medium. Fixed by usage, the practice has been perpetuated under rules later developed to direct, along general lines and without reference to specific localities, the placement of stations on the 107 available frequencies in a manner designed to achieve as fully as possible the continuing objectives of

providing: (a) some service of satisfactory signal strength to all areas of the country, (b) as many program choices to as many listeners as possible, and (c) service of local origin to as many communities as possible.

3. However, the compatibility of the objectives is confounded by the physical behavior of radio signals. Part of the energy radiated from the transmitting antenna of a broadcast station is called a groundwave and travels closely along the earth's surface where its intensity, although diminishing rapidly with distance, remains relatively constant at any location day and night and from season to season. The portion of the energy which travels upward and outward from the transmitter into the upper atmosphere from which it is reflected back to earth at distances much greater than the reach of groundwave signals is called a skywave signal. Skywave propagation is effective chiefly during the hours between sunset and sunrise and is present, to a lesser degree, during a 2-3 hour pre-sunset buildup and a similar post-sunrise period of waning intensity. Less constant in intensity than groundwave signals, skywave signals are nevertheless capable of providing

service wherever they have sufficient average field intensity above noise levels and are free from excessive interference by other stations on the same or adjacent channels. While power output and other factors affect the range of useful signals, one of the principal restrictions on a station's service area at night is the number of stations on the same frequency. It follows that a duplication of stations on the same channel to meet demands for local and multiple services dilutes the effective range of nighttime skywave propagation to distant rural areas where it may not be economically feasible to provide local transmitters.

4. The circumstance that any plan for allocating the use of a standard broadcast channel must accomodate divergent purposes led at an early stage of radio regulation to the classification of standard broadcast frequencies into several categories, each primarily directed to the achievement of one or another of the conflicting objectives. An early action of the then newly-created Federal Radio Commission was the institution in 1928 of a division of the standard broadcast spectrum into clear, regional, and local channels. Although the description "clear" was not officially applied to the unduplicated channels until the Radio Commission's 1932 allocations rules, the clear channel concept is recognizable as early as 1923 when 40 frequencies were set aside by the Secretary of Commerce for the exclusive use of single stations. The channel classification technique survived and was perpetuated in the Federal Communications Commission's 1938 allocations plan which has endured and become the touchstone of the entire standard broadcast structure.

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5. The existing classification of channels specifies three groups of frequencies, each with different rules for the assignment of stations depending upon the purpose for which each class of channel was established. The three groups are clear channels, which are the subject of this proceeding, regional channels on which stations are

assignable under conditions permitting service to large metropolitan areas, and local channels for the assignment of large numbers of stations serving as local outlets for numerous smaller communities. In the case of regional (Class III) stations and local (Class IV) stations, which broadcast on frequencies shared with other Class III and IV stations operating in other cities and communities, protection of service is confined to their groundwave signals. Skywave or secondary service free from objectionable interference is provided only by Class I stations assigned to the clear channels, and this service is made possible only by rigid restrictions on the number of stations which may be assigned to the clear channels at night and by limitations on the radiations of the secondary stations assigned to those channels. Twenty-four U.S. clear channels are now reserved for the exclusive use at night of a single Class I-A station. On the remaining twenty-three United States clear channels one or two United States Class I-B stations are assigned under conditions requiring mutual protection through the use of directional antennas. The assignment of secondary, Class II, stations is permitted on the clear channels under conditions and restrictions which recognize that the primary purpose to be served by the frequencies is the widespread service provided by the Class I station occupying the channel. Class II stations are expected to provide only a groundwave service and are required, by use of a directional antenna, limitations on antenna height and power, or other means, to protect the wide area service of the Class I station. The scheme for tailoring a station's facilities to conform to the purpose of its class is carried out in a variety of restrictions imposed on the class. These restrictions include maximum power limitations of 1 kilowatt for local stations, 5 kilowatts for regionals and 50 kilowatts for Class I and Class II stations.

6. A persistently plaguing deficiency in the allocation plan that has otherwise provided a plenitude of signals to populous centers has been the scarcity of service in the sparsely-settled areas of the country.

In the face of a 50% increase in the total number of fulltime stations in operation during the 10-year period 1947 - 1957, the extent of land area and population receiving no nighttime groundwave service from any stations was only insubstantially altered. More than half the total land area of the United States and perhaps as many as 25,000,000 people principally in northern New England, the more mountainous regions of the Middle Atlantic states, much of the South, the northernmost part of the Great Lakes area, within the Great Plains and the mountainous areas of the West, and in Alaska are estimated to be outside the range of usable nighttime groundwave service.

7. Since domestic and international use of other frequencies preclude any realistic prospect for increasing the size of the standard broadcast band of frequencies, improvement in rural service must be sought from existing or newly-assigned stations within the present band. Little improvement may be expected from Class III or Class IV stations because of unavoidable limitations on their nighttime interference-free service range. Thus such improvement as may be achieved must be provided on the clear channels.

The Basic Conflict

8. Two basically divergent views have persisted as to the measures best calculated to make more efficient use of the clear channel frequencies. On one side, it has been urged that the principal objective of providing satisfactory nighttime service to areas lacking such service is most likely to be attained by improvement in the capacity of the clear channel stations, particularly the Class I-A stations, to provide a good skywave signal to wide areas, this to be accomplished by permitting those stations to operate at substantially increased power and by limiting, and at night excluding, co-channel stations. The conflicting view has contended for an increase in the

number of unlimited time stations on the clear channels. The clear channel inquiry was instituted against this background of conflict between the basic alternatives of higher power versus duplication.

9. The Commission's Order of February 20, 1945, instituting this proceeding, was so extensive as to open the way for consideration of solutions ranging all the way between the extremes of exclusive nighttime use of selected clear channels by single stations operating at substantially higher power than the present maximum of 50 kilowatts and the reclassification of selected clear channels to local channels on which it would be possible to assign over 150 stations each, at a maximum power of 250 watts. Testimony was taken during extended hearings during 1946 and 1947 and a voluminous record compiled. At the same time, orders were issued freezing action on certain types of applications, grant of which appeared likely to conflict with reasonable settlement of the proceeding. In late 1947, the "daytime skywave" proceeding (Docket 8333), which had earlier that year been separately initiated to determine whether and the extent to which limitations should be imposed upon daytime skywave radiations toward Class I-A and Class I-B stations, was joined with the clear channel proceeding, and extensive oral argument before the Commission was held early in 1948 on the consolidated record. The daytime skywave phase was severed in 1953 and terminated in 1959 with the issuance of a Report and Order which adopted limits of permissible radiation toward Class I clear channel stations which were to be protected against objectionable skywave interference from further grants for daytime or limited time stations authorized to operate on those channels. Immediately prior to this decision, however, the Commission on April 15, 1958, reopened the clear channel record and narrowed the proceeding for its second phase.

The Further Notice

10. The Further Notice of Proposed Rule Making of April 15, 1958, invited comments on proposals to open twelve specified Class I-A channels for additional unlimited time assignments, to reserve for later determination proposals to increase power on the remaining Class I-A channels, and to leave undisturbed the Class I-B channels. On five of the twleve channels suggested for additional assignments it was proposed that there be placed a new directionalized Class I station and that the existing Class I station be required to directionalize, with the result that each station would afford mutual protection from interference to the areas served by the other. On the other seven channels, unlimited time Class II stations were proposed to be assigned in underserved areas. Comments in response to the Notice persuaded the Commission that its proposal for the licensing of such stations, because of the requirement that certain existing Class I stations directionalize their operations, would be accomplished only at the inordinate expense of substantial dislocations of existing skywave service and the unwarranted creation of new white areas. The Commission then decided to seek additional comments on a proposal to duplicate all the Class I-A channels without the objectionable requirement of directionalization by the Class I stations. The proceeding entered its third phase, thereafter, with the release on September 22, 1959, of the Commission's redefined proposal for settlement.[1/]

The Third Notice

11. The Third Notice of Further Proposed Rule Making, released September 22, 1959, invited comments on a proposal to provide for the assignment of new Class II stations on 23 clear channels,[2/] the new stations to be located in certain selected and designated states. The existing Class I-A stations would continue to operate with 50 kilowatts of power, but each would share operation with one new Class II station which would be located in a designated area and would operate

directionally with not less than 10 kilowatts of power in order to secure maximum coverage. Although not persuaded on the state of the record at that point that higher power would be in the public interest, the Commission also provided opportunity in the Third Notice for parties to update the record on proposals to increase maximum power for Class I-A stations.

1/ To restate in detail the considerations which have led up to the Third Notice would unduly lengthen this Report and Order. Persons desiring additional details of the historical progression of this proceeding, and who are not already familiar with the record, may consult the Further Notice of Proposed Rule Making adopted April 15, 1958 (FCC 58-350) and the Third Notice of Further Proposed Rule Making adopted September 18, 1959 (FCC 59-972).

2/ This includes 22 of the 24 Class I-A frequencies excluding 660 kc and 770 kc, and also includes 1030 kc, presently a I-B frequency.

12. Many parties took advantage of this invitation and in the more than 100 comments and more than 40 replies filed pursuant to the Third Notice, the basic dispute continues to be whether the additional needed service can better be supplied by permitting clear channels to operate at higher power or by permitting operation of an additional unlimited time station or stations on the clear channel frequencies. Recognizing that half the land area of the United States (excluding Alaska and Hawaii) remains nighttime white area, dependent upon skywave service, with little prospect of large-scale improvement in primary service, one view holds that much needed improvement in standard broadcast service to these areas can be achieved only through improved and increased skywave service and that this, in turn, requires an increase in maximum power for clear channel stations to 500 or 750 kilowatts. Others contend that since many Class I-A clear channel stations are clustered in the eastern portion of the country (a natural result of the greater population density and the superior capacity of such communities to provide economic support for such stations),

with 50 kw power and a nighttime skywave service range of about 700 miles, the needed improvement should come from the assignment of unlimited time stations on the Class I-A clear channel frequencies which now have only one station operating nighttime. We will direct our attention to this basic dispute after noting briefly one preliminary matter.

Shortcomings of Present Clear Channel Allocations.

13. As noted in our opening paragraph, we are concerned with whether and in what manner to amend the rules governing clear channels. Whether to amend them is comparatively simple to resolve. The proceeding was instituted because of insistent demands that present utilization is not adequate. That assumption underlies the entire proceeding. However, we must now look to the validity of that assumption and in doing so we conclude it has not only stood the test of time but that the situation has, if anything, become worse. We have noted that a great increase in the number of stations has only insubstantially reduced nighttime white area. Moreover, with our population growth, the number of people in white areas is growing.[3] There is substantial support in the comments for a conclusion that the exclusive nighttime use of a channel by a single station limited to 50 kw is less justifiable now than it was when clear channels were first allocated in this way. Since that time techniques have been established and highly developed for directional transmission of signals, with a high degree of suppression now possible to protect the service areas of co-channel stations. In addition, heterodyne interference resulting from uncontrolled deviations from the assigned frequency has been substantially eliminated. Thus it is now possible, particularly in the case of Class I-A stations located in or near the northeast portion of the country, to assign additional co-channel unlimited time stations to provide needed service

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[3] Based on the 1940 Census a population of 23,252,000 lived in white areas. By 1957 the white area population had grown to an estimated 25,630,000.

at distant locations, while preserving the capacity of the present station to provide a usable signal over wide primary and secondary service areas. In these circumstances there is serious question whether the most efficient use of the Class I-A clear channels can be achieved under the long-standing rules which, on the one hand, preclude power above 50 kw, and on the other hand, bar co-channel unlimited time assignments in distant areas which the present station cannot effectively serve, and where a new station could be operated so as to afford reasonable protection to the areas the present station does effectively serve at 50 kw. Almost without exception the commenting parties either note the need for additional service or at least do not attack the underlying assumption of such need. There were, however, a few comments to the effect that maintenance of the status quo would be preferable to adopting the alternative which the commenting party opposed.

Resolution of The Issues

14. Our review of the record and our analysis of the numerous substantive, procedural, and administrative questions which it raises make it convincingly clear that it would be undesirable to set in motion the simultaneous reallocation of all the Class I-A clear channels. The enormity of the consequent administrative burden alone would further glut our license processing and hearing resources and delay not only the achievement of improved service on the clear channels, but additionally delay our strenuous efforts to reduce the excessive and persistent backlog of pending standard broadcast applications.

15. Quite apart from these considerations, which in our considered judgment would alone warrant progressive rather than simultaneous approaches to reallocating the Class I-A clear channels, we find compelling reasons for avoiding a course which would precipitate changed modes of utilizing the Class I-A clear channels without opportunity to review and evaluate, as we go along, the effectiveness of such reallocations as we herein adopt for some of the channels.

16. Both in the Further Notice of April 15, 1958 and in the Third Notice of September 18, 1959 the Commission invited comments on proposals to remove the heretofore total exclusivity of nighttime use of the Class I-A channels by a single station. The Third Notice contemplated additional unlimited time station assignments on substantially all of the Class I-A channels. The earlier Further Notice had looked toward this step on half of them. The underlying justification, in each case, was the compelling need to go as far as possible toward reducing the vast areas which lack any nighttime primary service. The record is replete with data demonstrating that, to an extent, this can be done with resultant increments of nighttime primary service to persons now lacking it without undue interference to the wide area service rendered by the Class I-A stations. This possibility derives from a combination of factors including directionalization of new unlimited time stations on these channels, the long distances between their prescribed locations and the transmitter sites of the existing co-channel I-A stations and the numbers of other services available in limited areas where interference from the new station may to a limited extent interfere with present reception of skywave service from the existing Class I-A station. Moreover, the limited amount of skywave service which would be so subjected to interference is of a low order since new unlimited time stations will be required to protect the 0.5 mv/m 50% skywave contour of the Class I-A station--generally located approximately 700 miles from its transmitter.

[4093]

17. These basic considerations, in our considered view strongly underscore the desirability of permitting the establishment of new unlimited time stations on at least some of the Class I-A channels, and we make appropriate provision therefor, in the accompanying rule amendments, on 13 of the Class I-A channels: i.e. 670, 720, 750, 760, 780, 880, 890, 1020, 1030, 1100, 1120, 1180, and 1210 kc.

18. There is support, recognized in our Third Notice in this proceeding, for the similar treatment of additional Class I-A clear channels. To pursue that course at this time would, however, be subject to the grave objections already noted. It would, moreover, in one stroke crystallize a particular pattern of clear channel usage which would at least limit and at worst frustrate the future possibilities for employing other techniques of clear channel utilization. One of these is the use of higher power to improve the nighttime range of and, within existing service areas, the quality of skywave service reaching into the vast land areas where this is the only available technique for improving service since much of those areas lie beyond the foreseeable range of the primary service of any new stations which could be fitted into the crowded standard broadcast spectrum. Whether the public interest would be served by the authorization of higher power, whether, on the channels at this time left in status quo, duplication in the manner here adopted for 13 channels would serve the public interest, or whether any other alternatives including possible combinations of these techniques would best serve to improve service on these channels, we do not now decide.

19. At earlier stages of this proceeding strong objection to the authorization of higher power was expressed not only by interested parties but also by Congress. It is evident that in considering a question of the consequence of higher power, which would in any case be necessarily limited to a relatively few stations, the policy of the Congress should be accorded due recognition. The Senate of the United States on June 7, 1938, adopted a resolution (S. Res. 294, 75th Cong., 3rd Session) characterizing the use of power in excess of 50 kw by standard broadcast stations at "definitely against the public interest" and expressing the sense of the Senate that the Commission" should not adopt or promulgate rules to permit or otherwise allow any station operating on a frequency in the standard broadcast band. . . to operate on a regular or other basis with power in excess of fifty kilowatts."

20. Some parties have throughout the long history of this proceeding forcefully urged strenuous objection against the use of higher power which, it is asserted, would give vastly undue competitive pre-eminence to the very few stations to whom in any case powers on the order of 500 kw to 750 kw could conceivably be authorized. The Commission, while aware of the strength of these contentions, cannot on the other hand ignore the potential for significant additions to service which the employment of higher power on even a few stations could make possible. Our close scrutiny of the portions of the record going to the issue of higher power fails to persuade us that, whatever the merits of the pending proposals for higher power, the objections listed against it have been sufficiently met. Upon careful consideration of the question, we conclude that there is insufficient basis before us for a finding that the public interest would be served by authorizing higher power, but that at the same time the question warrants further consideration in the light of such improvements and changes in service as may result from the action we now take to authorize additional unlimited time stations on 13 of the Class I-A clear channels.

21. We thus leave open and unprejudiced the question of whether, and if so how, the public interest would be served by changing the rules affecting the use of the 12 Class I-A channels now left in status quo. At such time as further developments, including progress under the changes we now adopt, provide needed additional light on the question we will give further consideration to how best to utilize the 12 clear channels not now disturbed. It is manifestly desirable to do so on the basis of then current data and not to hold the instant proceeding open for the purpose. Much of the record herein was compiled years ago under different circumstances which have since changed markedly, and which may be expected to undergo further change. However, in any subsequent proceedings which may be held on the disposition of the twelve channels now left in status quo, parties will be

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permitted to incorporate by reference specifically designated pleadings herein, or designate portions thereof, as may be relevant to matters then under consideration.

[4095]

22. In pursuing this course we follow certain basic features of the pattern proposed in our Further Notice, while departing from some elements of that proposal to which objection, which we find meritorious, was advanced. We follow that pattern to the extent that it envisaged the establishment of additional unlimited-time stations, capable of providing primary service in white areas, on about half the channels, while leaving open for future consideration and decision action on the remaining Class I-A channels.

23. The primary feature of the Further Notice which evoked critical comment from the industry, and which was a factor in our determination to consider in the Third Notice a somewhat different allocations plan, was the suggestion that certain Class I stations be required to directionalize. This factor, in the language of the Third Notice:

> "would result in substantial reduction of the existing ground wave and skywave service, with the result that substantial new 'white areas' would be created in which no ground wave service would remain available from any station and that other areas would be reduced in the number of services received from four, three or two ground wave services to a single ground wave service. In addition, substantial dislocations would obtain of present skywave service which would not be fully compensated by new operations."

In the approach we adopt herein the requirement of directionalization by the Class I stations has been eliminated and the undesirable results noted above would not occur.[4]

24. We now have the benefit of updated comments directed to the two approaches of the Further Notice and the Third Notice. The course we take is consistent with both of these proposals in the basic sense that both proposals envisage the nighttime sharing of at least 12 of the Class I-A clear channels by more than one station. In addition, the Further Notice would reserve for future determination the use to be made of the remaining I-A channels. The method of duplication we adopt is that proposed in the Third Notice for 23 channels and proposed

[4096]

in the Further Notice for 7 channels. As noted, we have (except on 770 kc) removed the directionalization requirement for Class I stations. Since the two approaches do contemplate duplication of up to 12 frequencies, we have reexamined each of the 24 Class I-A channels, plus 1030 kc which is reclassified herein as a I-A clear channel. We discuss later our reasons for selecting the 13 channels which we earmark in this proceeding for duplication by a Class II unlimited-time station. Channel sharing on the selected 13 clear channel frequencies, as has been amply demonstrated in the comments, will not frustrate the achievement of the primary objective of clear channel allocation, i.e., to render wide area service to the residents of less densely populated portions of the country which are beyond the effective reach of interference-free nighttime service from other classes of stations. The conditions projected in the Third Notice for the operation of additional stations afford a high degree of protection to the 50 kilowatt Class I-A stations now occupying these channels i.e., to their 0.5 mv/m 50%

4/ That we do not follow the Further Notice approach generally does not alter the validity of our conclusion that in case of one particular I-A channel -- 770 kc -- directionalization of the existing Class I station so as to afford mutual protection to a similar operation in New Mexico would best serve the public interest. We note herein the special circumstances pertaining to that channel.

skywave contour. Such interference as our action herein would permit to minor, fringe reception beyond the 0.5 mv/m 50% skywave contour of those stations is, in our judgment, acceptable in view of the additional services which are thereby made possible from new stations in underserved areas.

25. While we do not now reach a decision either for or against the use of higher power, and while we thus leave entirely open the question of what station assignment plans would best serve the public interest on the 12 Class I-A clear channels left in status quo at this time, we recognize the critical importance of so tailoring the partial reallocation as to avoid undue prejudice to practical latitude for future decision. Our review of the comments persuades us that such undue restriction would have resulted from adoption of the proposal in the Third Notice to place additional unlimited-time stations on virtually all of the Class I-A clear channels.

26. Implementation of our judgment that we should at this time refrain from permitting shared nighttime use of all the Class I-A channels poses the problem of selecting, on a suitable basis, those channels on which we open the way to additional unlimited-time stations and those reserved for future decision. Numerous considerations bear on such a selection. The basic determinant is the question of whether, taking into account the numerous circumstances affecting each channel and the resultant overall pattern of service, it is best suited to shared use or to the preservation of possibilities of wider service from the existing Class I-A station through utilization of higher power. Key factors having a bearing on this judgment include:

a. Location of needful white areas.

b. The possibilities for providing a primary nighttime service in those white areas at sufficient distance from the Class I-A station to permit requisite protection of the generally usable portion of the existing station's skywave service -- i.e., the service area within its 0.5 mv/m 50% skywave contour.

c. Due protection to existing co-channel U.S. daytime stations and to U.S. stations on adjacent channels.

d. Consideration of adjacent channel interference to stations located in neighboring countries, and to foreign co-channel stations to which the United States is committed, under international agreements, to afford a stated degree of protection.

e. Avoidance of adjacent channel interference among new unlimited-time stations assigned to the Class I-A clear channels.

f. The location of white areas apparently beyond the reach of foreseeable new stations which could provide a nighttime primary service.

g. Existing skywave services in the foregoing areas and the consequent benefits from improved additional skywave services.

h. The location of Class I-A stations so situated -- with reference to geographic relationships to the needful areas and co-channel and adjacent channel domestic and foreign interference considerations -- as to indicate that they would be best adapted to the provision of additional and improved skywave services to the needful areas.

27. In the case of no single channel would all of the foregoing determinants uniformly indicate that it be earmarked for additional unlimited time assignment or that it be held in status quo for future consideration of alternative action. In each case we have arrived at our judgment by the painstaking process of determining and evaluating all the pertinent factors and deciding, on net balance, which course would best serve the public interest both in usage of the individual channel and in terms of the resultant assembled pattern of additional nighttime primary services on the one hand, and the potential for additional and improved skywave services in needful areas on the other hand. In weighing our choices of channels to be left at this time in status quo we have taken into account the desirability

of endeavoring to preserve the potential of at least four reasonably reliable and satisfactory skywave services throughout all white areas.

28. In arriving at the selection of Class I-A clear channels for duplication and for status quo, we have scrutinized with great care the entire record of this proceeding, including testimony, exhibits, briefs, oral argument, comments and other pleadings which, as we have noted, have included diverse alternatives and counter proposals.

29. Considering all pertinent factors, and submissions, and taking into account the skywave services presently received, we have determined that the public interest will be served by deferring action at this time on the following frequencies: 640, 650, 660, 700, 770, 820, 830, 840, 870, 1040, 1160 and 1200 kc. The potential for widespread improvement in skywave service is thus preserved for future evaluation.

30. In selecting 640, 820, 1160 and 1200 kc for inclusion in this group, we have noted that these are the only I-A channels (other than 1040 and 1120 kc discussed below) serving the West; that the west is characterized by vast regions of low population density where skywave signals afford the only nighttime broadcast service; that a choice among skywave signals is not generally available to a substantial part of the West; and that acceptable locations for assignment of new unlimited time stations on these channels would, in general, be limited to eastern areas already receiving abundant service. Accordingly, at this stage, we preserve the potential for improving skywave service which these channels afford.

31. On 660 and 770 kc, unlimited time assignments, in addition to the Class I-A stations, are already operating. For this reason, as we state in the Third Notice, no additional assignments on these channels is deemed warranted at this time. Similarly, we do not at this time take any action with respect to 830 kc because of the pendency of an adjudicatory proceeding involving WNYC's use of that frequency during nighttime hours.

32. The potential for improved skywave service which arises from the location of 650 kc at Nashville, 700 kc at Cincinnati, 840 kc at Louisville, and 870 kc at New Orleans warrants inclusion of these channels in the group as to which no action is to be taken at this time. We have examined the feasibility of duplication on these channels and, while we recognize that duplication on these channels is possible, we are reluctant to take any action at this time which would limit the potential of these stations for providing improved skywave service in underserved areas of the Southeast.

33. Of the group on which action is deferred, there remains only 1040 kc to be discussed. The Class I-A station on 1040 kc is located at Des Moines, Iowa. Both 1040 kc and 1120 kc, on which KMOX, St. Louis, Missouri, is the Class I-A station, are somewhat centrally located and those channels could be used either to provide nighttime groundwave service to white areas in the West or to provide some improved skywave service. We have concluded that, in attempting to achieve a proper balance between the immediate benefits of duplication and retaining a potential for improved skywave service, it is preferable to defer action on 1040 kc but to permit an additional station on 1120 kc. An important factor in making this choice was a realization that the potential of 1120 kc for providing improved skywave service is considerably limited in all directions by adjacent channel operations at Omaha, Nebraska, Charlotte, North Carolina, Shreveport, Louisiana, Minneapolis, Minnesota, and New York, New York.

[4099]

34. Turning now to the remaining Class I-A channels, we have determined that they can best be utilized by permitting operation of an unlimited time Class II station on each, thereby serving the important and immediate objective of providing nighttime primary service to white areas. This is not to indicate that other channels, among the group not presently duplicated, could not be duplicated and provide

valuable service to white areas. As we have indicated, our action here leaves to future determination, in the light of future developments, the decision as to what use should be made of those channels on which the status quo is presently retained.

35. We conclude that the proper balance between immediate objectives and possible future goals is best achieved by deferring action on the channels noted above and by permitting one new unlimited time operation on the following: 670, 720, 780, 880, 1020, 1030, 1100, 1120, 1180 and 1210 kc. In addition 750 and 760 kc will be duplicated but in a way designed to meet special situations arising out of the entry into force of the United States/Mexican Broadcasting Agreement.

36. Class I-A stations on 880, 1020, 1030, 1100, 1180 and 1210 kc are located at or near the northern or eastern boundaries of the country thereby affording maximum opportunity for assignment of unlimited time stations in the West where serious deficiencies in present service exist and the corresponding need for improvement is great. Such location permits flexibility in meeting the required spacing between co-channel Class I-A and unlimited time Class II stations. Moreover, the impact of the new unlimited time Class II stations on the present skywave service of these Class I-A stations will be at a minimum because the useful skywave service these stations render is generally confined to the extreme northeastern portion of the country.

37. The Class I-A stations on 670, 720, 780, and 890 kc are located in Chicago and, while they are, of course, west of the group just discussed, they still offer useful opportunity for assignment of unlimited time stations in the far West. Several western states will meet spacing requirements and, additionally, the useful skywave service provided by the Chicago I-A stations is confined to the region of the Great Lakes which insures a minimum impact by the new co-channel unlimited time Class II stations to their skywave service. An added consideration in selecting the Chicago I-A frequencies for

duplication is the limited potential which they have for improving skywave service in areas which need it. Adjacent channel Class I operations in New York would limit radiation to the east and requirements of protection to stations in Cuba and Mexico would limit radiation to the south. Their potential for improving skywave service to the west, moreover, is not so great as that of the Class I-A channels on which we are presently retaining the status quo.

38. We have already discussed 1120 kc. The special considerations concerning 750 and 760 kc are treated separately in subsequent paragraphs of this Report and Order.

[4100]

39. Our decision to permit nighttime sharing of 13 of the Class I-A clear channels could be implemented in several ways. If we were to follow the practice heretofore established in assigning new standard broadcast stations, applications meeting announced interference criteria and other technical standards would be accepted and processed without confining such applications to designated areas. This would not be practicable here. The acceptability of any location proposed for new unlimited stations on clear channels depends not only upon requisite protection to existing stations but also upon avoidance of undue interference among the new stations so assigned. This means that if we followed the general basis for standard broadcast station assignments we could expect to receive considerable numbers of mutually exclusive applications which conflict either because they propose mutually inconsistent uses of the same frequency or because they propose conflicts as to acceptable locations of new adjacent channel assignments on Channels 10, 20, and 30 kilocycles removed from the channel applied for. For these reasons the hitherto customary approach to new station assignments could be expected to require numerous complicated and interrelated hearings which would be vastly and unnecessarily time consuming.

40. Much of this impediment and delay can be avoided by the system we here adopt--of designating the particular state or states within which each of the I-A channels to be duplicated will be available for an additional unlimited time station. The states so designated have been selected with a view to making the most fair, equitable and efficient use of the frequency taking into account limitations imposed by the need to protect existing co-channel and adjacent channel stations, the areas of greatest need for additional nighttime primary service and the avoidance of undue mutual interference among the new stations themselves. Due regard has additionally been given requisite protection to stations in neighboring countries.

41. In the interests of fulfilling to the greatest possible extent the prime objective of the new unlimited time stations on the Class I-A clear channels -- i.e. to create new primary services in white areas -- we propose, as detailed below, to give preference to those applications which most fully serve this objective; and we will not consider any application for a new unlimited time station on one of the Class I-A channels unless it meets a specified minimum criterion for new primary service to white areas.

42. For the foregoing reasons we reject proposals that we fix by rule the specific communities in which these frequencies may be so used. It would not be possible to anticipate, in advance of the filing of specific station assignments, the finite circumstances of principal city and radiation pattern which could best serve the objective of clear channel duplication. We leave this for decision on the basis of applications to be submitted in accordance with the rules herein adopted.

[4101]

43. As to the suggestion that more than one unlimited time Class II station be authorized on the same Class I-A channel, we deem it preferable at this time to permit only one unlimited time Class II

station on the channels selected for such use. After we have the benefit of the manner in which the new unlimited time Class II stations are utilized, and details of actual performance, interference, etc. become available, we will be in a position to determine whether the public interest warrants assignment of additional unlimited time facilities on these channels, and, if so, to determine under what conditions they should be permitted. We are convinced, however, that such a decision should await further developments and that extension of the plan adopted herein to include such multiple use is not warranted at this time.[5/]

44. The record also reveals that many of the comments requesting Class II facilities come from parties seeking to improve their existing service--which is all too often in the areas of concentrated population where little "white area" would be served. We have emphasized our aim of securing standard broadcast radio service to those areas which lack nighttime primary service. The standards we adopt herein are directed toward the achievement of that end and represent our considered judgment of the best way to fill these gaps in service at this time. In considering applications for Class II facilities on these clear channels we shall look closely at the applicants' plans for serving such "white area". The extent to which the facilities thus made available are ultimately utilized is, and necessarily so under our free competitive system, dependent upon the business judgment of prospective applicants and licensees. The fact that the theoretical optimum of service is unlikely of practical attainment due to such considerations as population distribution does not preclude our adopting a solution which more nearly achieves the objectives of broadcasting in the standard band than does the present utilization of Class I-A clear channels at night by only one station. The net result of the action we take today is to open the way for additional nighttime primary service to the public, especially in those areas where such service is needed, while at the same time holding to a minimum any loss of existing service to the listening public.

5/ In this connection, Argonaut Broadcasting Company, Standard Broadcasting Company, and Seattle, Portland and Spokane Radio filed a joint petition for acceptance of supplemental comments on July 7, 1961, seeking consideration of multiple nighttime use of the channels on which they operate limited time stations. The comments were filed more than one year after the record in the proceeding had been closed. Moreover, they came after public announcement of instructions by the Commission to its staff. The orderly processes of rule making required that petitions so filed be denied. In any event, as noted in the text, it has been decided that multiple use (i.e. nighttime sharing of the frequency by more than the Class I and a single Class II station) is not warranted at this time but should await further developments. The petition for acceptance of late comments filed by John Poole Broadcasting Co., Inc. is also denied. That petition was also filed more than a year late and is an attempted reargument of matters already presented in timely comments and considered by the Commission. Several oppositions were filed to each petition.

45. Moreover, it is expected that, upon final resolution of this proceeding, applications may be forthcoming from parties who have not commented in this proceeding and that additional sites within the states selected, will be proposed. We can in a comparative hearing consider, inter alia, the white area population expected to be served under the various proposals. Indeed, prospective applicants should be aware that we intend, absent decisive countervailing circumstances, that as between fully qualified applicants complying with all our Rules, the one who will serve the largest white area population will receive the grant. Parties are thus forewarned that white area population served rather than total population served is of prime importance herein. We can foresee at this time only one kind of circumstance in which it may be anticipated that the grant should not necessarily go to the qualified competing applicant proposing the first primary service to the largest number of people. Under Section 3.182(g) of the rules, primary service is not considered to exist in towns with a population from 2,500 to 10,000 if available groundwave service has a field intensity of less

than 2 mv/m. It is possible that one applicant for an unlimited time Class II station may be in a position to show that he would provide a first nighttime primary service to more people than a competing applicant, in reliance upon his provision of groundwave service with a field intensity of 2 mv/m or better to persons living near enough to an existing unlimited time station, so that they now receive service of 0.5 mv/m or better, although less than 2 mv/m. Some usable groundwave signals, although not of the standard contemplated in Section 3.182(g), are thus available to persons so situated. A competing applicant, on the other hand, may be in a position to demonstrate that he proposes a first groundwave service to a larger number of people who do not now have an 0.5 mv/m groundwave signal or better available to them. Considering the objectives of our rule changes herein, it would be appropriate, in reaching our decision in such case, to take this circumstance into account and not necessarily to grant perfunctorily an application which reflects a first primary service to the largest number of people by virtue of including in the count persons who, although they do not receive the 2 mv/m signal prescribed in Section 3.182(g), are nevertheless able to receive a signal of at least 0.5 mv/m.

[4103]

Standards Governing New Station Assignments

46. In light of the fundamental concepts which we have enunciated above -- and considering that the I-A channels are those which must be primarily looked to for the improvement of overall standard broadcast service -- we adopt the following allocation standards, looking toward the assignment of unlimited-time stations herein classified as II-A stations. The Class I stations now licensed to operate exclusively in the United States on these channels, listed in the Table in Section 3.22 of the Commission's Rules, will continue to operate with 50 kilowatts of power but will share operation on the channel with one newly licensed station located in the designated area. These additional

assignments are those which, from a careful analysis of the entire allocation picture, we have determined will go furthest toward achievement of our objective, provided they meet certain standards as to power and service to "white areas". The applicable standards are:

(1) The application must be for assignment to a community within the state or states specified in the Table in new Section 3.22 of the Rules.

(2) The application must be for unlimited time operation with no less than 10 kw nighttime power. A few parties have suggested that lower power should be considered. Minimum power as herein specified is necessary if a substantial amount of badly needed nighttime primary service is to be provided and we affirm our earlier judgment in this respect. While it is anticipated that these stations would also operate ordinarily with at least 10 kw power daytime, in some cases requirements of protecting existing nearby daytime stations may require that the new station operate with lower power daytime, and accordingly, to provide more flexibility with respect to the new assignments, we do not impose such minimum requirement as to daytime power.

(3) At least 25% of the area or 25% of the population within the station's nighttime interference-free service contour must not receive nighttime interference-free primary service from any other station.

Applications not meeting all of these standards will not be in compliance with our Rules and will not be accepted, but will, if tendered, be returned.

47. Additionally, the new Class II-A stations will be required to observe the following protection requirements:

(1) Daytime protection standards for existing Class I-A stations will be as prescribed in the present rules.

(2) Nighttime standards will require that the existing Class I-A station normally be protected to its 0.5 mv/m, 50% skywave field strength contour.[6] The location of this contour will be determined in accordance with procedures specified in the present rules for Class I-B stations and the 10% skywave signal from an interfering station on the same channel shall normally not exceed 25 uv/m at this contour.

(3) In addition to providing protection to the existing Class I-A stations, the new Class II-A stations will be required to afford protection to existing stations of other classes, as prescribed for Class II stations in accordance with present rules, except to facilities granted after October 30, 1961.

Determination of service and interference with respect to Class I-A Stations

48. In order to implement the assignment plan and to insure that the Class II-A stations provide needed service while imposing a minimum impact on the service of the existing Class I-A stations, the Commission, in its "Second Supplement to the Third Notice" released February 19, 1960, sought comments concerning proposed engineering standards for the limitation of nighttime co-channel interference to Class I-A stations. Almost without exception, the comments and engineering statements which have been submitted proposed adoption of standards which are based either on the definitions of service given in Exhibit 109 of this proceeding or on the present Commission Rules relating to operation of stations on Class I-B frequencies.

49. The Commission has previously recognized Exhibit 109 as "the most comprehensive and realistic tool yet devised for evaluation of standard broadcast service" (emphasis added). A number of comments noted however, and we agree, that adoption of standards based upon definitions of service given in this Exhibit would not lend themselves to convenient administration. We are disposed to assign considerable weight to the requirement that standards be susceptible of practical administration, in order to facilitate implementation of

the allocation plan we adopt with minimum procedural delays. Observing this criterion, and giving due consideration to all comments filed, we have determined that the new assignments on Class I-A channels provided for herein shall be based on somewhat simpler concepts along the lines presently embodied in our Rules -- i.e., protection of the Class I-A stations normally to their 0.5 mv/m 50% skywave contours. However, location of 50% and 10% time skywave contours will be determined by a method slightly different from that now used on clear channels--i. e., by use of skywave curves contained in a new Figure 1a of Section 3.190, which are the same as those contained in Appendix E to Annex 2 of NARBA; and, as to pertinent angle of departure, use of present Figure 6a of Section 3.190, which is now used for frequencies other than clear channels (as to which Figure 6 is used), and which is the same in pertinent part as Appendix F to Annex 2 of NARBA. The location of the 50% time contour will be determined by the use of Curve number one of Figure 6a, with the title of that figure modified accordingly. For the time being, assignments on Class I-B channels

[4105]

will continue to be based on Figure 1 and Figure 6 of that section.[6a]

50. Use of the new Figure 1a and Figure 6a, the NARBA curves, instead of present Figures 1 and 6, has several advantages. First, it makes more uniform the treatment of applications from a domestic and from an international standpoint. Second, as a step toward elimination of Figures 1 and 6, it works toward simplifying the Commission's rules by providing for only two standards instead of the present three. Third, use of the NARBA skywave curves and the

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[6] We recognize the importance of clear service to national defense communications and in emergencies, and find substantial support in the comments to the effect that if there is to be duplication the existing Class I-A stations should be protected to their 0.5 mv/m 50% skywave contour.

more refined Figure 6a, angle of departure curves, will give somewhat more realistic results in terms of extent of service, interference, and protection. Fourth, the computation process involved in using new Figure 1a and Figure 6a is somewhat simpler. Lastly, use of these figures -- especially 6a instead of 6 -- will result in more complete protection of the I-A station to its 0.5 mv/m 50% skywave contour, the desired objective. We have also considered the use of the latitude-corrected curves contained in Figure 2 of Section 3.190, which are the same as the 10% time curve contained in Exhibit 109; but we conclude that the considerations of simplicity mentioned above make preferable the use of the standards adopted here.

Service to nighttime "white areas"

51. We have set forth above a minimum standard which the proposed new Class II-A assignments must meet in order to be entitled to consideration under our new rules -- that at least 25% of the area or population within its nighttime interference-free service contour must not now receive any nighttime interference-free primary service from another station. We adopt this minimum criterion because obviously a proposed operation which would not add this much service to present "white" areas would not greatly serve to fulfill our objective, and at the same time would probably, if not certainly, block a later operation which would be of more value in this connection. We believe that prospective applicants in each case can and should be expected to pick locations and design operations which will meet this criterion.

Application Processing

Applications for Class II-A assignments will not be placed in our normal processing line, but will be processed immediately. This is necessary if our objective, which these are the chief and first means of fulfilling, is to be attained with reasonable promptness. We disfavor exceptional priorities in license processing except where the most compelling circumstances call for them. It is unquestionable, in our considered judgment, that the public interest in improved and increased AM broadcast services will be far better served by proceeding with the least possible delay to deal with Class II-A assignments, than by requiring them to wait until many hundreds of more routine applications which were previously filed have first been disposed of.

6a/ Because of the large distances involved between co-channel stations, the use of the frequencies 660 kc (New York City and Fairbanks, Alaska) and 770 kc (New York City and Albuquerque) will not be affected by the substitution of Figures 1a and 6a for Figures 1 and 6. This is primarily because at the distances between one station and the 0.5 mv/m 50% skywave contour of the other (more than 1400 miles) the pertinent angle of departure is virtually zero under either Figure 6 or Figure 6a.

53. We will, however, allow a period of 90 days after the effective date of the rule amendments herein for the filing of applications for Class II-A stations before acting upon any of them, in order to afford reasonable opportunity for the submission of other applications which may more effectively serve the major objective of reducing nighttime white areas. Where more than one application for an assignment provided for herein is filed, a comparative hearing will, of course, be required.

Prohibition of new daytime assignments on Class I-A channels

54. For a number of years, we have been concerned with the crowding, and indeed over-crowding, of the daytime standard broadcast spectrum, which has not brought a corresponding gain in service. Not only has such intensive crowding of stations into the spectrum not brought the amount of needed additional service which had been hoped for, but it has been argued that economic limitations on programming for very limited audiences in very small interference-free service areas have prevented individual stations from rendering the quality of broadcast service which they might otherwise provide. It is the I-A channels to which we must look primarily for achievement of our overall allocations objectives. Therefore, for these and related reasons,

we have concluded that the I-A channels should not be opened for the assignment of stations on the same uncontrolled basis prevailing in the AM service generally, where each application is considered separately except with respect to conflicting applications or objectionable interference to specific existing stations. Further assignments on the I-A channels should be made in accordance with an overall plan which will achieve our various objectives, including provision of maximum service to underserved areas, provision of local outlets for the maximum number of communities, and others.

55. We have achieved such plan with respect to the making of the Class II assignments provided for herein. After the specific location and facilities of the Class II stations have become established, the way would be open for consideration, in subsequent rule making proceedings, of any further proposals which may be submitted for additional unlimited-time Class II assignments on the Class I-A channels in question. As in the case of the Class II-A assignments for which we now provide, any such rule making proposals would be examined in the light of the prime objective of further reducing nighttime white areas while at the same time affording due protection to the co-channel Class I-A station.

56. In the circumstances we are amending the rules to remove provision for new daytime stations on the 25 Class I-A clear channels. Pending applications therefor will be dismissed. It is evident that

the assignment of new daytime stations on the Class I-A channels could in many instances frustrate the future optimum use of these channels for additional unlimited-time stations. Considering the potential reach of co-channel interference, the making of numerous daytime assignments on these channels could seriously impair the value of the new Class II-A assignments through extensive daytime interference to the new Class II-A station and by imposing protection requirements which the new Class II-A station would have to meet.

Moreover, new daytime stations on the 12 Class I-A channels now held in status quo could hinder or obstruct whatever further use of the channels -- higher power and/or additional unlimited-time assignments -- may later be found appropriate in furtherance of our objective of improved overall radio service.

Adjacent Channels

57. Our Rules take into account objectionable groundwave interference not only between co-channel stations but also between stations 10 kc and 20 kc removed. As to skywave interference the Rules (Section 3. 182) take into account objectionable skywave-to-groundwave interference co-channel and between stations 10 kc removed.[7] The Rules (Section 3.37) also provide that two stations will not be authorized 10 or 20 kc removed when the 2 mv/m groundwave contour of one would overlap the 25 mv/m contour of the other, or 30 kc removed where the 25 mv/m groundwave contours would overlap.

58. Aside from some of the Class I-A channels themselves (as to which, since there will for the time being be no further applications other than those specifically provided for herein, no further consideration need be given in this connection), there are a total of 33 frequencies which are located adjacent to -- i.e., within 30 kc of -- one or more Class I-A channels. These include 14 I-B channels (other than 1030 kc, herein reclassified as I-A), 10 channels on which Canada or Mexico has priority for Class I-A use, 7 regional channels, and the two local channels 1230 and 1240 kc. In our judgment, it is obvious that we should not proceed to grant applications for these frequencies where the operation proposed would have a substantial impact on future optimum use of the Class I-A channels, either the specific use provided herein for 13 of them, or possible future uses of the other 12 which are to be the subject of continuing study.

7/ Objectionable interference exists where the ratio between desired and undesired groundwave signals is less than: (1) co-channel, 20 to one; (2) 10 kc apart, one to one; (3) 20 kc apart, one to 30 (Section 3.182(w)). Adjacent channel (10 kc removed) skywave-groundwave interference exists where the ratio is less than one to five. The rules also recognize adjacent channel (10 kc removed) groundwave-to-skywave interference; but since only Class I stations are generally regarded as rendering skywave service, this problem does not arise here.

59. The problem of protecting against such adverse impact from adjacent channel operations has two parts:

(1) protection of the new unlimited time Class II assignments on 13 Class I-A channels from new or changed operations on adjacent channels which would thwart such new Class II assignments or jeopardize their value because of interference caused or received, or involve prohibited contour overlap;

(2) protection of the future use to be decided upon for the remaining 12 Class I-A channels upon which the status quo is retained for the present.

Different kind of restrictions are necessary with respect to frequencies adjacent to the two groups of Class I-A channels involved in (1) and (2) above. Since some frequencies are adjacent to Class I-A channels in both groups, it will be necessary (with the exception noted below) to impose both kinds of restrictions as to the adjacent frequencies so situated.

Protection with respect to New Class II Unlimited Time Stations

60. The frequencies which are adjacent to the Class I-A channels on which we now permit new Class II unlimited time assignments are

680, 690, 710, 730, 740, 790, 800, 810, 850, 860, 900,
910, 920, 990, 1000, 1010, 1050, 1060, 1070, 1080, 1090,
1110, 1130, 1140, 1150, 1170, 1190, 1220, 1230 and 1240 kc.

[4108]

We find that in order to avoid undue risk of mutual interference or prohibited overlap between stations on these frequencies and the new unlimited time Class II stations, which would seriously impair the value of the latter, it will be necessary to process applications on the above-listed frequencies in accordance with the provisions of paragraph (a) of the appended revision of Section 1.351 of the rules. When it appears that theadjacent channel facilities requested would involve undue risk of objectionable daytime or nighttime interference to, prohibitive daytime or nighttime interference from, or prohibited overlap with, a possible Class II assignment as provided herein, the possibly conflicting application will not be granted but will be held pending until the location of the new Class II station and its mode of operation are determined. If a hearing on the possibly conflicting application is in progress or is ordered for other reasons, the hearing will include an issue as to effect to or from the new Class II assignment. When the location and facilities of the new Class II station are determined, the other application will be: (1) granted (or otherwise acted upon independently of the new Class II assignment), if it appears that interference or overlap conditions as mentioned would not exist; or (2) designated for hearing, where it appears that such conditions would exist. The hearing will not be comparative, but will be upon the issue of whether, with the Class II station operating as proposed, grant of the other application would serve the public interest, taking into account the extent of interference or overlap between the two operations.

[4109]

61. In giving the foregoing priority to Class II assignments over conflicting assignments on adjacent channels we depart from long established bases for comparative consideration in such cases. We do so with full awareness of the requirements under Section 307(b) of the Communications Act for fair, efficient and equitable distribution of radio facilities. After the most painstaking consideration we conclude that, in view of the paramount importance of enabling

the new Class II-A stations to achieve -- to the greatest extent possible -- the primary objective of reducing nighttime white areas, for which Class I-A frequencies are best suited, it could only frustrate the effective implementation of Section 307(b) and invoke wasteful hearing processes to no useful end, to apply here the long established route of the comparative routines which have hitherto been generally followed. In our judgment, the public interest will be much better served by giving the Class II-A stations the protection discussed above. Such action, although not conforming with past routines, is not unprecedented. It is basically similar to the precedence given Class I-A assignments over conflicting applications in the interest of service to areas which it is impracticable to reach with other classes of stations. Similar precedence in the case of the Anchorage and San Diego assignments is required in order to effectuate adjustments necessary to meet this nation's international obligations.

62. It is apparent from the foregoing that we do not contemplate grant of any applications for facilities which would prevent making the new unlimited time Class II assignments established herein, or which could not co-exist with them. It is possible, however, that some assignments on adjacent frequencies may receive interference from these subsequently authorized Class II stations. Therefore, in order to provide the greatest opportunity for these new Class II assignments in furtherance of our objectives, and in order that, where appropriate, such assignments may be implemented without the cumbersome and time-consuming adjudicatory processes often involved in new AM assignments, we will impose, as a condition on any grant of an application for new or changed facilities on one of the frequencies listed in paragraph 60, the condition that the grant is subject to whatever objectionable interference may be received from any of the new Class II unlimited time stations provided for herein. Our rules are amended so as to provide that all grants involved are so subject, and every authorization on any of the indicated frequencies will carry this condition.

Protection with respect to Class I-A channels left in status quo

63. The following frequencies are adjacent to the 12 Class I-A channels which for the time being we leave in status quo:

610, 620, 630, 680, 690, 710, 730, 790, 800, 810, 850,
860, 900, 1010, 1050, 1060, 1070, 1130, 1140, 1150,
1170, 1190 and 1220 kc.

[4110]

We find that in order to avoid undue risk of frustrating future improvements to service on the 12 Class I-A channels now left in status quo (whether by possible future authorization of higher power, by possible future Class II unlimited time assignments, or by possible combinations of these techniques) it is necessary to apply to applications on the above listed adjacent frequencies the restrictions set out in paragraphs (b) and (c) of Section 1.351, as herein amended. We have omitted from the foregoing list two frequencies (740 kc and 1230 kc) notwithstanding the fact that, like those listed, they also are adjacent to Class I-A channels now held in status quo.[8]

64. The restrictions we impose on the adjacent frequencies listed in paragraph 63 will be maintained until September 1, 1964, by which time it is expected that we will be able to decide the future use of the 12 Class I-A channels now left in status quo. Should earlier decision be reached, it will be possible to shorten this period. In the interim we deem it necessary to defer the processing of all applications for new facilities on the listed frequencies, or for the change of existing stations to these frequencies. Only by this means is it possible to safeguard effectively against the assignment of new stations which could obstruct the possibilities for meaningful improvement of service by whichever of the techniques it may be found best to employ in improving service on theClass I-A channels now left in status quo. Additionally, as provided in the appended amendment to Section 1.351, we will examine requests for modifications of outstanding authorizations on the frequencies listed in paragraph 63, with a view to insuring that those

which propose increases of power, or which seek authorization to operate existing stations during nighttime hours not now authorized, will not prejudice the effectuation of service improvements on the 12 reserved Class I-A channels. Action will be deferred until September 1, 1964, on applications which we find would jeopardize such improvements.

65. It is because of the relative degree of possible impact that, in the restrictions summarized in paragraph 64, we have made a distinction between applications for new facilities and those for certain major changes. The effect of a change in facilities (without change of frequency) is more predictable in terms of possible impact on adjacent Class I-A channels, if for no other reason than that the station whose facilities are to be changed is already in existence, radiating and entitled to protection, and therefore -- whatever may ultimately be determined as the optimum use for the Class I-A channel -- the inhibiting effect on such use from the proposed change in facilities will often be inconsequential. In the case of a new station, on the other hand, the facilities would represent, almost by definition, a substantial new factor on the frequency which would have to be reckoned with in deciding the ultimate use of the adjacent Class I-A channel. This is true both because of the interference potential of the new operation, involving radiation in an area of the country where usually it did not exist before on that frequency, and because the new operation would be entitled to some degree of protection and would thus impose a limitation

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8/ Despite these adjacenies, it is not appropriate to subject 740 kc and 1230 kc to the same restrictions which are applied to the other frequencies listed in this paragraph. 740 kc is adjacent to 770 kc. The limits of future use of 770 kc are sufficiently defined by previous Commission decisions as to establish the degree of protection required to be provided to stations assigned to this channel. The special circumstances pertinent to 1230 kc are noted below in paragraph 67.

on use of the adjacent I-A channel in that area. Thus, until final decisions are reached as to the future uses of these Class I-A channels, any new station on an adjacent channel is quite likely to have a damaging adverse impact. We must, therefore, defer action on all such applications for the three-year period mentioned, i.e., until September 1, 1964, unless appropriate over-all decisions can be made earlier.

Protection with respect to adjacent Class IV channels

66. We recognize the need for exceptional treatment of 1230 kc and 1240 kc, which are Class IV channels. Both are adjacent to 1210 kc on which a new Class II-A station is proposed. Under separate rule amendments previously adopted the Commission has increased the daytime maximum power of Class IV stations from 250 watts to 1 kilowatt. There is strong reason for keeping the way open to the prompt processing of applications for such daytime power increases, in order that, insofar as possible, Class IV stations still operating with less than 1 kw daytime may have the opportunity to offset the interference effects of power increases by other Class IV stations. Since the power increase is confined to daytime hours, since there is a maximum limit of 1 kilowatt, and further, in view of the fact that the adjacencies here involved are 20 and 30 kc removed from the pertinent Class I-A channel, the regular processing and grant of these applications may not be expected to interfere unduly with the assignment of a Class II-A station on 1210 kc. Applications on 1230 and 1240 kc other than for daytime power increase will be considered in the light of possible impact on the Class II-A assignment, as provided in the revised Section 1.351 of the rules.

67. For similar reasons, we refrain from imposing further restrictions on the use of 1230 kc, notwithstanding the fact that it is additionally adjacent to 1200 kc, one of the Class I-A channels on which we now preserve the status quo. Owing to the remoteness of the adjacency involved (30 kc removed), and the limitations otherwise imposed by our rules on the use of Class IV frequencies, we find that

no useful purpose would be served by barring new Class IV assignments on 1230 kc, or by otherwise limiting the use of this channel.

[4112]

Resultant Revision of Freeze Rule

68. Hitherto, under a blanket freeze imposed by Section 1.351 of the rules, the processing of all applications of designated types on all Class I-B channels within 30 kc of Class I-A channels has been deferred. Under Section 1.351 as herein amended, the processing of applications on frequencies adjacent to the Class I-A channels will, with one exception, no longer be deferred. Instead, (with the one exception of applications for new stations on designated adjacent frequencies) processing of applications will proceed in the normal course. Only where it is determined that the grant of an application would jeopardize improvement of service on Class I-A channels as contemplated herein will we defer action on the adjacent channel application until further developments make it possible to evaluate the matter definitively.

69. While we thus moderate the former freeze, we at the same time have found it necessary, for reasons already stated in some detail, to extend to additional adjacent frequencies the remaining restrictions applied to preserve due latitude in making the most fair, efficient and equitable possible use of the Class I-A channels. Specifically, we now bring within the purview of the amended Section 1.351 frequencies which, like those formerly included, are within 10, 20, or 30 kc of a Class I-A channel. Although the rule had formerly applied only to Class I-B channels so situated, it has frequently been pointed out that, so limited, the rule hazarded damaging assignments on other classes of similarly adjacent channels. Since the only "freeze" (i.e., deferrment of application processing) now retained has been narrowed to new assignments on channels adjacent to 12 of the Class I-A channels, Section 1.351, as amended to include additional adjacent channels, will have less restrictive effect than if these channels had been so included

when the "freeze" provisions applied to frequencies adjacent to all of the Class I-A channels. The fact that, animated by the desire to restrict the freeze, we formerly confined it to adjacent Class I-B channels, did result in assignments on similarly adjacent frequencies of other classes which to an extent have hampered and limited our efforts to make optimum use of the Class I-A channels on which we have found it desirable to permit new unlimited time Class II stations. This experience has demonstrated that continued omission of some adjacent frequencies from the restrictions imposed under Section 1.351 is bound to create progressively serious jeopardy to the realization of the vital and basic objectives of the best utilization of the Class I-A clear channels. We thus have found it imperative to adjust section 1.351 in the manner described above. We do so with regret that it will create some delays, and only after reaching the considered judgment that, taking all pertinent factors into account, the public interest will be best served by the course here adopted.

Some Specific Problems

70. A few specific problems and areas of comment should be noted at this point. As we noted in our Third Notice, the operations of KFAR, Fairbanks, Alaska, on 660 kc and of KOB, Alburquerque, New Mexico, on 770 kc, have caused us to conclude that no additional assignments on these two channels are warranted at this time.

71. One specific proposal for use of 770 kc was received but it was a proposal for multiple use of the frequency. We have already denied requests for multiple use at this time. Meredith Engineering Co., National Weekly, Inc., and Sky Broadcasting Service all sought multiple use of 660 kc in various diverse locations.

72. One other related proposal is the suggestion by WJR, The Goodwill Station, Inc., Detroit, the I-A station on 760 kc, that the use of 760 kc by KGU, Honolulu, Hawaii, should be considered as the

duplication of that frequency and no further assignments made thereon. We cannot agree. In the case of 660 kc, we have recognized that because of the paucity of radio facilities operating in Alaska, it would be inadvisable to permit the same amount of interference to reach that area as we do in the remaining states where some 3400 radio stations are in operation. Alaska, with its vast remote area, is highly dependent upon its radio services, KFAR can serve most of Alaska, which obviously does not receive services from other states, but could not do so if we authorized another station on 660 kc somewhere in the Southwest. We are motivated in this regard by the need for protection against the potential interference which would be caused to the Alaska station by a new Class II station so located that it would protect the dominant station and also comply with restrictions caused by operation of a co-channel station in Cuba. There is no similar need to protect 760 kc in Honolulu, several thousand miles from the mainland. Moreover, it is WJR, the I-A station on the frequency, which makes the suggestion -- and not KGU. WJR, along with all other Class I-A stations, will be protected to its 0.5 mv/m 50% skywave contour.

640 kc and 830 kc

73. While neither 640 kc, on which KFI operates as the I-A station at Los Angeles, nor 830 kc, on which WCCO operates as the I-A station at Minneapolis, is authorized for use by a Class II-A station, both of these frequencies should be given special attention here because of pending hearings which involve the question of additional use of those frequencies.

74. On 640 kc, Station WOI, Ames, Iowa (which is regularly licensed to operate on this frequency daytime with 5 kw non-directionally), operates with 1 kw power from 6:00 a.m. (C.S.T.) to sunrise at Ames, which is during nighttime hours when sunrise is later than 6:00. Notwithstanding the fact that this operation does not meet the conditions of Section 3.78 of the Rules concerning pre-sunrise operation of daytime stations on clear channels, the Commission has, since 1944, authorized such

pre-sunrise operations by WOI under a series of Special Service Authorizations (and more recently under other temporary authority), a type of authorization employed in exceptional circumstances to permit uses of AM frequencies for which provision is not made in the general rules. There is currently pending an adjudicatory proceeding, Docket No. 11290, in which there is at issue the basic question of whether the public interest would be served by continuing to authorize WOI's pre-sunrise operation.

75. Since 1943, WNYC, a municipally owned and operated station at New York City, has been permitted under a series of temporary authorizations to operate on 830 kc during certain nighttime hours: 6:00 a.m. (E.S.T.) to local sunrise and from sunset at Minneapolis to 10:00 p.m. (E.S.T.), with power of 1 kw. (WNYC's regularly licensed limited time operation on 830 kc is at 1 kw power, with a different directional antenna). Notwithstanding the directional antenna employed, WNYC's operation during nighttime hours causes interference within the secondary service area of WCCO at Minneapolis. In a pending adjudicatory proceeding (Docket No. 11227) consideration is being given to the question of whether, balancing the interference caused to WCCO against the service WNYC renders during nighttime hours, the public interest would be served by continuing to permit WNYC's nighttime operation, for which no provision is made in the AM rules governing the use of Class I-A frequencies.

76. We do not here decide upon or prejudice the decision in those adjudicatory proceedings. In one pertinent respect, however, it is appropriate to take action in this proceeding by way of amending the clear channel rules to establish the basis for the regular licensing of WOI's pre-sunrise operations and WNYC's nighttime operations so that in the event it is decided in the adjudicatory proceedings that such operations are in the public interest the way will be clear procedurally for applications to be filed for such operations on a regular basis.

750 kc and 760 kc

77. In two instances we have provided for a solution to special problems arising by virtue of the entry into force of the United States-Mexican Broadcasting Agreement, by allocating 750 kc to Anchorage, Alaska for use by station KFQD and 760 kc to San Diego, California for use by station KFMB.

78. The Agreement between the United States of America and the United Mexican States Concerning Broadcasting in the Standard Broadcast Band signed in January, 1957, gives Mexico a Class I-A priority on 540 kc and thus precludes its continued use at San Diego. While discontinuance of this particular use of 540 kc in the United States is offset by advantages deriving from the provisions of the Agreement for reciprocal protection on all AM broadcast frequencies, the problem remains of finding a suitable frequency on which the service heretofore provided by KFMB at San Diego may continue to be rendered to that community and adjacent areas. It is appropriate that use be made of the relatively uncluttered spectrum space still open on the Class I-A clear channels, and that provision be made in this proceeding -- which embraces the allocation questions pertaining to all Class I-A frequencies -- for a substituted assignment to San Diego. A painstakingly careful review of all the availabilities persuades us that 760 kc is the preferable choice, taking into account requirements of protection to Mexican stations on other Class I-A channels, the availabilities of some other Class I-A clear channels for new Class II-A stations at other places in the United States, domestic and Canadian co-channel and adjacent channel limitations on the allocation of individual Class I-A clear channels, and related considerations. We accordingly herein assign 760 kc for use for a Class II unlimited time operation at San Diego. Exceptionally, in this instance, we confine the assignment to a specific city instead of making it available generally throughout one or more states in conformity with the general pattern of clear channel reallocations adopted herein.

79. In reaching this decision, we have given consideration to all comments relating to KFMB's request for shift to 760 kc or other frequency, and to possible alternative solutions. These include comments by Stations KFSD, San Diego, WJR, Detroit and other comments bearing on this problem. We note the interest of KFSD, a station operating at San Diego on 600 kc, in shifting to a Class I-A frequency if any should be made available. Parties interested in securing a Class II-A operation in California may apply for 1120 kc which is herein made available for application in California or Oregon. The interests of any other parties in the use of 760 kc at San Diego can, of course, be considered in connection with renewal of KFMB's license on that frequency. We are not, however, using 760 kc to solve the main issues of the clear channel proceeding but for this special limited purpose. Therefore, it will not be available under the criteria governing Class II-A stations but will be authorized to operate with 5 kw of power, the power presently used by KFMB on 540 kc. Finally, we recognize that an authorization under this rule will require waiver of Section 3.37 of our rules because of a 2 mv/m and 25 mv/m overlap with Station KBIG, Avalon, California (740 kc).

80. In like manner, we are reserving 750 kc, herein assigned to Alaska, for use at Anchorage by KFQD, which must vacate 730 kc under the terms of the Mexican Agreement. This special need results in the use of 750 kc in Alaska, rather than in Arizona as proposed by the Third Notice. Moreover, our careful search has disclosed no other frequency which, under the general allocation plan we adopt, could be allocated to Arizona. However, the comments received under the Third Notice show that 750 kc would have been "unworkable" in Arizona in any event. Use of 750 kc in Arizona is undesirable because it would present serious adjacent channel problems and the assignment could not be used in wide areas of the state. The necessity of avoiding interference to KUEQ (740 kc, Phoenix), coupled with its central location in Arizona, constitutes a formidable bar to the flexible use of the frequency within the state. Other substantially limiting factors to such assignment would be the necessity of protecting co-channel

Station KMMJ, Grand Island, Nebraska, and an adjacent channel station (740 kc) at Cortez, Colorado. These stations would probably forever limit an Arizona station on 750 kc to a power of 10 kw and would seriously restrict its location. We note, in passing, that no specific proposals were received requesting 750 kc for Arizona. We have given the parties comments and proposals careful considerations and agree that 750 kc is not a desirable assignment for Arizona. Because of the special use made of 750 kc, it will not be governed by the criteria applying to Class II-A stations. Its use at Anchorage will be limited to 10 kw, the power presently used by Station KFQD on 730 kc.

81. We note with respect to both the Anchorage and San Diego assignments made herein on 750 kc and 760 kc, that neither serves the primary objective of the clear channel reallocations adopted in the appended rule amendments: i.e., the provision of primary service to white areas. Were it not for the special and compelling circumstances which justify the exceptional use of these frequencies as herein provided for, we would have preferred to allocate them for stations which would provide a first primary service in white areas. We nevertheless conclude, after a painstaking balancing of all pertinent considerations, that it is appropriate and desirable to make the exceptional provisions for 750 kc and 760 kc which we here adopt. As to both, we impose a requirement that they protect the 0.5 mv/m 50% skywave contour of the Class I-A station operating on the same channel. In addition, they will, of course, be required to meet the daytime protection standards presently contained in the Rules.

KOB (770 kc)

82. The special circumstances relating to 770 kc and 1030 kc relate largely to the "KOB problem".[9] In 1940, as in prior years, Stations WJZ, New York City (now WABC) WBZ, Boston, and KOB, Albuquerque, operated as Class I stations on the clear channels 760 kc, 990 ck, and 1180 kc, respectively, Section 3.25 (a) of our Rules then providing that 760 kc and 990 kc were I-A clear channels, and 1180 kc was a I-B clear channel. Under the reallocations effected in late 1940 and early 1941 to implement the first North American Regional Broadcasting Agreement, all of these stations were required to change frequency. WABC (WJZ) was shifted to 770 kc, and under the rule amendments effective March 29, 1941, that frequency became a I-A clear channel. As part of the overall reallocation (in which many stations were moved to higher frequencies) it was necessary to remove KOB from 1180 kc, and no frequency could be found on which that station could retain its I -B status. Accordingly, WBZ and KOB were both assigned to 1030 kc, WBZ as a Class I-B station and KOB as a Class II station, and began operation on this frequency March 29, 1941. The rule amendments effective the same date made 1030 kc a Class I-B frequency. Because of the limited service KOB could render on 1030 kc, efforts were made to find a frequency on which its service area would be larger. Accordingly, in October, 1941, KOB received a Special Service

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[9] For a more complete history of this matter, see the Commission's decision in Albuquerque Broadcasting Company, Appendix A, 25 FCC 683, 794; 16 RR 765, 883 affirmed 280 F. 2d 631, 20 R.R. 2001 (1960).

Authorization to operate on 770 kc with 50 kw day and 25 kw night, non-directionally. Since October, 1941, KOB has operated on 770 kc, under a series of SSA's and most recently under temporary authority.[10]

83. Early in 1944 KOB applied for modification of construction permit and license to operate on 770 kc with 50 kw power, unlimited time and non-directionally. It was the hearing proceeding on this application (Dockets 6584 and 6585) which ultimately resulted in our decision of September 1958 (25 FCC 683, 16 RR 765), in the "KOB case". This hearing, after an extensive inquiry into 10 possible modes of operation by KOB (4 on 770 kc and 6 on 1030 kc) resulted in a determination that the public interest would best be served by KOB and WABC both operating on 770 kc as Class I stations, affording each other mutual protection by directionalizing their operations at night. The Commission accordingly amended its Rules to permit assignment of two Class I stations on 770 kc. Of great importance in reaching this conclusion was the fact that KOB would render a much larger nighttime primary service 11/ under this mode than under any other mode, as well as some secondary service, including secondary service to an area in the West which receives only two other secondary service and has no nighttime primary service (See 25 FCC 771-782, 16 RR 859-873). The decision took into account the loss of service from WABC which would be entail by requiring that station to directionalize (which would occur largely in the East, where service is substantially more abundant); and there was specific comparison of the mode finally selected with operation by KOB as a Class II station protecting WABC's present service. (See 25 FCC 778, 16 RR 866-867). The decision outlined various procedural steps designed to implement this conclusion; KOB, as permitted by the decision filed an amendment to its 770 kc application looking toward the operation decided upon. Pending action on this application, KOB continues to operate on 770 kc under its temporary authority, with 50 kw daytime and 25 kw, directionalized to protect WABC, at night. WABC has consistently opposed KOB's assignment to 770 kc, and in its presently pending application for renewal of license indicated that it does not acquiesce in our conclusion that its nighttime operation should be directionalized to afford KOB mutual Class I protection. Since the rule amendment

is phrased in permissive rather than mandatory terms, WABC's renewal application is not technically in conflict with the amended rules. KSTP, Inc., the licensee of KOB, has filed an application for facilities on 770 kc at New York City, directionalized as set forth in our KOB decision, obviously in conflict with WABC's renewal application.

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[10] In 1957, pursuant to an Order of the Commission following a mandate of the Court of Appeals for the District of Columbia, KOB's nighttime operation was directionalized so as to substantially protect WABC from objectionable interference within that station's 0.5 mv/m 50% skywave contour, and it presently operates on that basis. However, KOB has continued to be licensed for operation on 1030 kc, presently holding a renewal of license until 1962 on that frequency, even though it does not operate thereon.

[11] Under this mode of operation KOB can provide a nighttime primary service to 156,275 persons who lack any such service from other stations as compared to only 37,483 persons who would be so benefitted if KOB should operate as a Class II station protecting WABC.

[4119]

84. ABC appealed our decision to the United States Court of Appeals for the District of Columbia, which in May 1960 affirmed the Commission. (*American Broadcasting Company* v. *FCC*, 280 F. 2d 631 20 R.R. 2001.) However, the Court added:

> "At the same time, we do not think that the position of ABC as a network should be permanently prejudiced by forcing it to share a channel if other networks are given full use of clear channels. This inequity, if it exists or is permitted to exist, should be cognizable by the Commission in a proper proceeding brought before it by ABC, even though the assignment of KOB to 770 kc is permitted to continue. In other words, the Commission should seek to provide channel facilities to the ABC network on a basis which is fair and equitable in comparison with other networks. Whether this is to be done by permitting ABC to intervene in the clear channel proceedings now pending, or through some other

means, is not for us to say. It may be that ABC can raise its claims in this regard by filing competitive applications when present licensees on other frequencies seek renewal or by seeking modification of existing licenses held by others. Perhaps the Commission will afford, sua sponte, some other procedural remedy. Thus, we do not believe that ABC has been or should be precluded from a hearing on its claim that the public interest requires that the loss of service in the East, which Class I broadcasting from Albuquerque produces, be absorbed by some eastern broadcaster other than WABC. Any failure by the Commission to give due consideration to ABC's claim for treatment comparable to that accorded to other networks, when raised in an appropriate manner, may be brought to the courts for review."

85. In view of the above language of the Court of Appeals and the need for further hearings concerning some or all of the three pending applications mentioned above, it is not appropriate here to determine finally the exact form of operations which will be permitted on the channel 770 kc. However, we have in our deliberations herein reviewed the disposition to be made of all of the clear channels, including that frequency, and certain conclusions as to the "KOB problem" and 770 kc are required and appropriate at this point. These, which are discussed in more detail below, are as follows:

(a) For reasons stated at length in the KOB decision, and in line with our general conclusions reached herein concerning the need for using I-A channels to provide a first nighttime primary service in underserved areas, the public interest requires the establishment of a major unlimited time facility in New Mexico. This is particularly true in the unique "KOB case", where the area once had Class I service and was deprived of it because of the reallocations required in 1941 in connection with the first NARBA.

(b) The frequency 1030 kc, being greatly inferior to 770 kc for such operation for reasons stated in the KOB decision, can no longer be regarded as involved in the "KOB problem", and is available for other use. Its utilization is discussed below.

(c) The frequency 770 kc is the one most suitable and appropriate for such operation by KOB. We did not consider alternative frequencies other than 770 kc and 1030 kc in the KOB proceeding, and we should not and indeed cannot consider them further -- e. g., on the basis of an evidentiary record as requested by ABC -- either here or in whatever hearings may take place with respect to the 770 kc applications mentioned above.

(d) Whatever may be the ulitmate decision as to operation by New York and Albuquerque stations on 770 kc, we conclude with respect to this channel, for the same reasons discussed above with respect to the I-A channels generally, that multiple breakdown thereof, with more than two stations operating at night, is not in the public interest at this time. Therefore pending applications for unlimited time operations by other stations on this frequency will be dismissed.

86. The only one of these points requiring further discussion is the selection of 770 kc as the frequency for the New Mexico unlimited time assignment, without further consideration of other frequencies on the basis of an evidentiary hearing as requested by ABC. This channel was selected in the KOB case as one of two for consideration, because of the historical association of that frequency with the "KOB problem". Of the two channels so studied, 770 was selected as greatly preferable to 1030 kc. The Court of Appeals affirmed our actions in both respects. Upon further examination of all of the channels, we find 770 kc to be the appropriate one for use in New Mexico. It must be borne in mind that the overall allocation scheme adopted herein was carefully worked out, as it had to be, to take into account the numerous problems involved in making the new assignments on the I-A channels -- protection of

Canadian and Mexican stations, protection of our own co-channel and adjacent channel assignments, placing the new stations far enough from the co-channel Class I-A stations so that the former can render a reasonable amount of service, and avoidance wherever possible of having the new unlimited time stations in adjacent states on channels only 10 kc apart. The assignment of 770 kc for use in New Mexico meets these requirements, and permits the rendition of a large amount of much-needed service in that area. Our decision affirming that assignment is based upon what we deem best for the public with due regard for present and potential service in the standard broadcast medium. Whatever significance considerations relating to "networking" and network competition may have in other contexts -- a matter we do not decide here -- we cannot conclude that the public interest would be served by attempting to redesign the entire nationwide allocation of frequencies adopted here solely in order to alleviate whatever adverse situation may confront ABC in these respects.[12] Consideration of this character, which are subject to frequent change, cannot be of great consequence in deciding wide-ranging, basic, and relatively permanent allocations questions such as those involved here.

[4121]

87. For these reasons, ABC's request for evidentiary hearing on alternative frequencies for the New Mexico assignment must be denied. Moreover, it would make a complete travesty of our efforts to resolve the many and fundamental clear channel allocation problems, involving hundreds of stations all over the country, if we were to proceed to consider other alternative frequencies on the basis of an evidentiary record. As mentioned above, there is no one single obvious alternative. Even if limited to three as proposed by ABC, such an inquiry would obviously take a vast additional amount of time; and there is no reason why licensees of stations affected by inquiry into these frequencies could not suggest still further alternatives which we would be compelled to consider. While

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[12] There is no one other frequency which could be considered as an obvious alternative to 770 kc for Class I use at Albuquerque, even aside from the other disposition of the various I-A channels made herein. Of the three proposed by ABC — 660, 680, and 1180 kc — 880 and 1180 kc would not provide as much needed primary service in the Southwest as does 770 kc. As to 660 kc, while this frequency might afford somewhat more of such service in the Southwest, this channel has long been used by Station KFAR, Fairbanks, Alaska, in addition to the Class I-A station at New York City. Such use we have concluded herein to be consistent with our allocation plan. Additional use at Albuquerque would raise slightly the nighttime limit to KFAR in Alaska, and thus prevent that station to some extent from rendering widespread and needed service.

such a proceeding, doubtless of several years' duration, would be going on, not only would resolution of the "KOB problem" be delayed, but we could not proceed finally with any substantial reallocation of clear channels anywhere, because we would not know what frequency would finally be selected for this important use. A blanket "freeze" on a substantial portion of the broadcast spectrum, affecting many applications, would have to be maintained for the same indefinitely long period.

89. Whatever disposition is finally made as to operation on 770 kc, the use of this frequency will harmonize with uses herein made of Class I-A channels for the provision of much needed nighttime primary service in areas otherwise lacking it. The Class I-A channels formerly reserved for the exclusive nighttime use of a single station, on which we now permit two unlimited time stations, include all those occupied by network owned stations.

90. In view of the foregoing considerations, we here affirm our KOB decision insofar as it determined that a major unlimited time facility should be assigned to New Mexico on 770 kc and amended rules to permit the assignment of two Class I stations on that frequency.

KOA

91. Metropolitan Television Company, licensee of KOA, Denver, Colorado, admits that since the I-A channels, rather than the I-B channels, form the basis for our overall allocation plan, KOA is not

directly affected. However, it urges that KOA be restored to Class I-A facilities. It does not suggest what to do with the 10 full-time stations now sharing its frequency. The KOA request goes beyond anything adopted herein and must be denied.

1030 kc

92. Since 1030 kc is no longer involved in the "KOB problem", we proposed in our Third Notice to permit a Class II unlimited time assignment on that frequency in Montana or Wyoming.[13] That Notice also contemplated the use of 650 kc in Montana and 1180 kc in Wyoming. We have seen that 650 kc is not one of the frequencies on which duplication will now be permitted. As to 1030 kc and 1180 kc, further examination has revealed that by utilizing 1030 kc in Wyoming and 1180 kc in Montana greater protection can be afforded to the I-A operation at Salt Lake City which provides the only I-A service to vast regions of Idaho, Utah, Wyoming, Nevada, Arizona, New Mexico and Colorado. The change involves only the Montana and Wyoming assignments and each of these states still receives one Class II-A assignment. No proposals were received pursuant to the Third Notice with respect to either of these frequencies. Moreover, assignment of 1030 to any portion of Wyoming and 1180 to any portion of Wyoming and 1180 to any portion of Montana is not precluded by the location of the I-A stations on those channels.

93. Such use of 1030 kc is, of course, similar to that now adopted for those I-A channels on which duplication will be permitted. 1030 kc is now a I-B channel under our rules, though assigned to the United States for priority of use as a I-A channel under the 1950 North American Regional Broadcasting Agreement, and the 1957 Agreement between the

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[13] In view of KOB's operation on 770 kc, the fact that KOB has a license on 1030 kc is not an impediment to assignment of a new 1030 kc station elsewhere.

United States of America and the United Mexican States Concerning Radio Broadcasting in the Standard Broadcast Band. The question is whether this frequency should be reclassified as a I-A channel in our rules. In the pending file (because of the "freeze") [14] are some six applications for use of this frequency on an unlimited time Class II basis in the continental United States, none of which is for Wyoming. If 1030 kc becomes a I-A channel these applications, of course, cannot be granted under the rules we adopt herein as to the use of these channels.

94. We conclude that 1030 kc should be utilized by a Class II-A station in Wyoming and that it should be reclassified as a I-A channel. The reason why it was made a I-B channel in 1941 -- to afford an assignment for KOB in New Mexico -- no longer exists, and therefore it is appropriate to give this frequency the status accorded it under international agreements. It must be borne in mind that a I-A channel -- on which the United States or any other country having I-A priority is afforded protection to its borders rather than merely with respect to particular existing operations -- is a national asset. We should not suffer a loss by default of such an asset to which we are entitled under international agreements. These considerations outweigh the restriction on unlimited time assignments which is entailed if 1030 kc is made a I-A channel. Moreover, the Class I-A assignment which is provided on that frequency is an integral part of the plan which we have adopted for achievement of the primary objective of improving service to white areas. We could not consider in any event the making of other unlimited time assignments which would impair the value of this new Class II-A allocation. The reclassification of 1030 kc is consistent with our decision mentioned above not to permit, for the present, use of the channels duplicated in this proceeding by more than one unlimited time Class II-A station. Accordingly, Section 3.25 of our rules is amended herein to make 1030 kc a I-A channel, and the pending applications for unlimited time operation thereon within the continental United States will be dismissed.

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[14] Section 1.351 of our rules, the "freeze" rule, provided that, pending the decision in Docket No. 6741, action would be withheld on applications for facilities on the I-A channels and on 1030 kc and 14 other I-B channels.

Denial of Educational Reservations

95. Comments pursuant to the Third Notice were filed by about 30 educational groups which requested that some or all of the proposed new Class II stations be reserved for educational use. Of this group, nine gave some indication that the commenting party itself is interested in obtaining the use of a clear channel frequency. One such party stated it has the necessary funds available to it.

96. The Commission has never reserved frequencies for educational use in the standard broadcast band. When television came to the fore as a new medium, we recognized the high costs of establishing a television station and the necessity, if educators were to be given sufficient opportunity to utilize the medium, that some channels be reserved for non-commercial use in the establishment of the Table of Assignments to give the educational community time to evaluate the uses of the medium, and to raise the huge sums required for the construction and operation of stations. This decision was necessitated in part by the limited number of channels available.

97. In AM radio, however, the situation has been somewhat different. Construction costs are substantially less than they are for television stations. Radio as a medium has existed for many years and it is not necessary that educators be given time, as was required in the new medium of television, to study possible uses and the impact of the medium. We see no need in the public interest for the reservation requested. Our objective of securing nighttime primary service to areas which presently lack such service has been made clear. Detailed requirements that successful applicants for such stations must meet are enumerated herein. Moreover, as we noted in our Sixth Report and Order setting up the Table of Television Assignments, the potential of television for education is much greater and more readily apparent than that of aural broadcasting and that the interest of the educational community in the field is much greater than it was in aural broadcasting. Nothing we are

adopting herein forecloses additional educational AM radio. Educational applications for the Class II-A stations hereby made available will be accepted on the same basis as are commercial applications. Those mutually exclusive applications complying with our Rules will be given comparative consideration.

The I-B Channels

98. In our consideration of the clear channel proceeding in recent years, we have not contemplated breakdown of the I-B channels any further than at present. Because of the relatively complicated conditions and requirements which already obtain on these channels and which would have to be taken into account in any new allocation plan -- requirements of protecting usually two co-channel United States I-B stations and a number of co-channel unlimited time United States Class II stations, foreign protection requirements, the fact that the United States receives protection on these channels only with respect to existing operations and not to the borders of the country, and similar factors -- the Class I-B channels do not lend themselves to use in an overall allocation plan, and we must look primarily to the I-A channels for an allocation pattern designed to improve overall radio service.

99. Accordingly, we adopt herein no change in the established principles and standards governing the assignment of stations to Class I-B channels. Further, consistently with the changed mode of protecting future uses of Class I-A channels, we remove the blanket freeze hitherto applicable to 15 Class I-B channels and retain only the restrictions already discussed, which are adapted to and necessitated by our decisions concerning the utilization of the Class I-A channels.

Concluding Observations

100. This proceeding, which was initiated in 1945 on eleven issues of wide scope, and pursued further under subsequent Notices issued in 1958 and 1959, has embraced an encyclopedic variety of approaches

and proposals going to the basic question of how best to utilize almost half the spectrum space devoted to standard broadcasting. While the sheer volume of the record and the fact that it has spanned a period of consequential change in standard broadcasting have added difficulty to the task of deciding upon the most desirable course, the Commission has been vastly assisted by numerous helpful contributions made in submissions on the record through testimony, exhibits, briefs, oral arguments, comments and other pleadings.

101. In the hard fought, head-on conflict between the two basic approaches of extending the reach of major stations on clear channels or increasing the numbers of stations permitted on these channels, much valuable data and analysis have been placed before us by the proponents of both approaches. Recognition is due to the fact that some merit attaches to very many of the proposals which have been urged upon us, including some of those which we herein reject. Our essential task in this proceeding has been to select among the myriad solutions offered those which, on net balance, taking into account the many pertinent considerations, would best serve the public interest. The opposed factors bearing upon our judgments in some instances are closely balanced. While recognizing that much can be said for numerous alternative approaches, we now conclude that the course laid out herein, both as reflected in the rule changes now adopted and in the preservation for the time being of the status quo on 12 Class I-A clear channels, represents the best solution available at this time.

[4126]

102. Authority for adoption of the rule amendments herein is contained in Sections 4(i) and (j), 303(a), (b), (c), (d), (f), (g), (h), and (r), and 307(b) of the Communications Act of 1934, as amended.

103. In view of the foregoing, IT IS ORDERED That, effective October 30, 1961, the Commission's Rules ARE AMENDED as set forth in the Appendix hereto; and

104. IT IS FURTHER ORDERED, That all pleadings, petitions, comments and reply comments, requesting other changes in our rules relating to clear channels; requesting that no changes be made; requesting further hearing, oral argument, or evidentiary hearing; or requesting other relief not adopted herein ARE DENIED; and

105. IT IS FURTHER ORDERED, That this proceeding, Docket No. 6741, IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION*

Ben F. Waple
Acting Secretary

Adopted: September 13, 1961

Released: September 14, 1961

* See attached Dissenting Statement of Commissioner Lee:

See attached Statement of Commissioner Cross Concurring in Part and Dissenting in Part

NOTE: Amendment of Part 1 herein will be covered by Transmittal Sheet I-13; amendment of Part 3 will be included in a revised edition of Volume III being prepared.

[4127]

APPENDIX

PART I

1. Section 1.351 is amended to read as follows:

§ 1.351 Applications for frequencies adjacent to Class I-A channels.

Notwithstanding the provisions of any other rules of the Commission, all applications (regardless of when they were or may be filed) for frequencies located within 30 kc of a Class I-A channel listed in § 3.25(a) of this chapter will be subject to the provisions of this section. The provisions of paragraph (a) of this section apply to the frequencies listed therein, which are within 30 kc of a Class I-A channel on which an unlimited time Class II assignment is specifically provided for in § 3.22 or 3.25 (a) of this chapter. The provisions of paragraphs (b) and (c) of this section apply to the frequencies listed in paragraph (b), which are within 30 kc of the remaining Class I-A channels. Where a frequency is listed both in paragraphs (a) and (b), applications for facilities on such frequency are subject to the provisions and restrictions contained in both of said paragraphs.

(a) (1) The provisions of this paragraph apply to the following frequencies:

680, 690, 710, 730, 740, 790, 800, 810, 850, 860, 900, 910, 920, 990, 1000, 1010, 1050, 1060, 1070, 1080, 1090, 1110, 1130, 1140, 1150, 1170, 1190, 1220, 1230, 1240 kc.

(2) Where it appears that the facilities requested in any application for one of the designated frequencies (other than an application by an existing Class IV station to increase daytime power on 1230 or 1240 kc) involves undue risk of objectionable interference to, prohibitive interference from, or prohibited overlap with, a possible new Class II-A assignment specified in § 3.22 of this chapter or a new unlimited time Class II assignment at Anchorage, Alaska, or San Diego, California, specified in § 3.25 (a) of this chapter, such application will not be granted until the location and operating facilities of such new Class II station are established. Assignments of such new Class II stations will be made without regard to the pendency of applications on adjacent frequencies. Any hearing which may be held on such an application for an adjacent frequency will not be comparative with respect to the Class II facility, and any issues pertaining to the mutual impact of the Class II and adjacent channel operations concerned will be confined to the question of whether, with a Class II station operating as proposed, the public interest would be served by a grant of the adjacent channel application.

(b) (1) Until Sept. 1, 1964, or such earlier date as may be announced, the provisions of this paragraph and of paragraph (c) of this section will apply to all applications for the following frequencies:

610, 620, 630, 680, 690, 710, 730, 790, 800, 810, 850, 860, 900, 1010, 1050, 1060, 1070, 1130, 1140, 1150, 1170, 1190 and 1220 kc.

[4128]

(2) Applications for new stations on, or for change of existing stations to, one of the designated frequencies will not be granted, and, except as provided in paragraph (c) of this section, will be placed in the pending file without further processing or consideration. Where before October 30, 1961, such applications had attained protected status under § 1.354 or by designation for hearing, they will retain such status to the extent so established. Additionally, such applications will be protected, as provided elsewhere in the rules, through designation for hearing. They will not be otherwise protected.

(3) Applications for increase in power or operation during nighttime hours not previously authorized will be processed in normal course, but will be considered in the light of the effect that grant thereof might have upon possible future uses of the Class I-A channel or channels located within 30 kc of the frequency involved (e.g., authorization of power greater than 50 kw for Class I-A stations, or additional unlimited time co-channel assignments). Such applications will not be granted if it appears that they risk prejudice to such possible future uses of the Class I-A channels concerned, because of interference caused or received, or prohibited overlap. In these situations the application involved, if otherwise ready for grant (after hearing or otherwise) will be placed in the pending file. Where it appears that because of these considerations an application cannot be granted in due course, the applicant will be so notified and, notwithstanding the provisions of § 1.311 and 1.354, will be permitted to amend his application within 45 days of such notice, without change in position in hearing

or on the processing line, in order to remove the circumstances which stand in the way of a grant. Applications will acquire and retain protected status as they would in normal course.

(4) Applications for other changes in facilities on the designated frequencies will be processed and acted upon in normal course.

(5) Action will not be withheld under this paragraph on applications for facilities in Alaska, Hawaii, Puerto Rico, or the Virgin Islands.

(c) (1) After October 30, 1961, hearings will not be designated on applications falling under paragraph (b) (2) unless they conflict with applications not falling under paragraph (b) (2).

(2) If the decision in a hearing looks toward grant of an application which, under paragraph (b) (2) or (b) (3), cannot be made immediately, such application and all applications conflicting with it will be placed in the pending file, and will retain protected status.

[4129]

2. In § 1.354, paragraphs (a) and (c) are amended, paragraphs (d) through (j), inclusive, are redesignated paragraphs (f) through (1), inclusive, and new paragraphs (d) and (3) are added, as follows:

§ 1.354 Processing of standard broadcast applications.

(a) Applications for standard broadcast facilities are divided into three groups.

(1) In the first group are applications for new stations (except applications for new Class II-A stations) or for major changes in the facilities of authorized stations, i.e., any change in frequency, power, hours of operation, or station location: *Provided, however,* That the Commission may, within 15 days after the tender for filing of any application for other modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of § 1.359.

[4129]

(2) The second group consists of applications for licenses and all other changes in the facilities of authorized stations.

(3) The third group consists of applications for new Class II-A stations.

* * * * *

(c) Applications for new stations (except new Class II-A stations) or for major changes in the facilities of authorized stations are processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and are drawn by the staff for study, the lowest file number first. Thus, the file number determines the order in which the staff's work is begun on a particular application. There are two exceptions thereto: The Broadcast Bureau is authorized to (1) group together for processing applications which involve interference conflicts where it appears that the applications must be designated for hearing in a consolidated proceeding; and (2) to group together for processing and simultaneous consideration, without designation for hearing, all applications filed by existing Class IV stations requesting an increase in daytime power which involve interlinking interference problems only, regardless of their respective dates of filing. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the Commission will periodically publish in the Federal Register a Public Notice listing applications which are near the top of the processing line and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all applications excepting those specified in exception (2) in this paragraph must be filed if they are to be grouped with any of the listed applications.

[4130]

(d) Applications for new Class II-A stations are placed at the head of the processing line and processed as quickly as possible. Action on such applications may be at any time: (1) more than 30 days after public notice is given of acceptance of the application for filing, or (2) after January 30, 1962, whichever is later.

(e) The processing and consideration of applications for new stations or major changes on those frequencies specified in § 1.351 are subject to certain restrictions, as set forth therein.

PART 3

3. Section 3.21 is amended to read as follows:

§ 3.21 Classes of standard broadcast channels and stations.

(a) Clear channel. A clear channel is one on which the dominant station or stations render service over wide areas, and which are cleared of objectionable interference within their primary service areas and over all or a substantial portion of their secondary service areas. Stations operating on these channels are classified as follows:

(1) Class I station. A Class I station is a dominant station operating on a clear channel and designed to render primary and secondary service over an extended area and at relatively long distances. Its primary service area is free from objectionable interference from other stations on the same and adjacent channels, and its secondary service area free from interference except from stations on adjacent channels, and from stations on the same channel in accordance with the channel designation in §§ 3.25 or 3.182. The operating power shall not be less than 10 kilowatts nor more than 50 kilowatts. (Also see § 3.25(a) for further power limitation.)

(2) Class II station. A Class II station is a secondary station which operates on a clear channel (see § 3.25) and is designed to render service over a primary service area which is limited by and subject to such interference as may be received from Class I stations. Whenever necessary a Class II station shall use a directional antenna or other means to avoid interference with Class I stations and with other Class II stations, in accordance with § 3.182 (and § 3.22 in

the case of Class II-A stations). Class II stations are divided into three groups:

(i) *Class II-A station.* A Class II-A station is an unlimited time Class II station operating on one of the clear channels listed in § 3.22 and assigned to a community within a state specified in the Table contained in that section. A Class II-A station shall operate with power of not less than 10 kilowatts nighttime nor more than 50 kilowatts at any time.

[4131]

(ii) *Class II-B station.* A Class II-B station is an unlimited time Class II station other than those included in Class II-A. A Class II-B shall operate with power not less than 0.25 kilowatts nor more than 50 kilowatts.

Note: The Class II station operating unlimited time on 760 kc at San Diego, California, shall be limited to a power of 5 kw and the Class II station operating unlimited time on 750 kc at Anchorage, Alaska shall be limited to a power of 10 kw. Both stations shall protect the I-A station on the same frequency to its 0.5 mv/m 50% skywave contour.

(iii) *Class II-D station.* A Class II-D station is a Class II station operating daytime or limited time. A Class II-D station shall operate with power not less than 0.25 kilowatts nor more than 50 kilowatts.

(b) *Regional channel.* A regional channel is one on which several stations may operate with powers not in excess of 5 kilowatts. The primary service area of a station operating on any such channel may be limited to a given field intensity contour as a consequence of interference.

(1) *Class III station.* A Class III station is a station which operates on a regional channel and is designed to render service primarily to a principal center of population and the rural area contiguous thereto. Class III stations are subdivided into two classes.

(i) Class III-A station. A Class III-A station is a Class III station which operates with power not less than 1 kilowatt nor more than 5 kilowatts and the service area of which is subject to interference in accordance with § 3.182.

(ii) Class III-B station. A Class III-B station is a Class III station which operates with power not less than 0.5 kilowatt, nor more than 1 kilowatt night and 5 kilowatts daytime, and the service area of which is subject to interference in accordance with § 3.182.

(c) Local channel. A local channel is one on which several stations operate with powers no greater than provided in this paragraph. The primary service area of a station operating on any such channel may be limited to a given field intensity contour as a consequence of interference. Such stations operate with power no greater than 250 watts nighttime, and power daytime no greater than:

(1) 250 watts if the station is located 100 kilometers (62 miles) or closer to the Mexican border, or in the area of the state of Florida south of 28 degrees north latitude and between 80 and 82 degrees west longitude; or

(2) 1 kilowatt if the station is located elsewhere.

[4132]

(3) Class IV station. A Class IV station is a station operating on a local channel and designed to render service primarily to a city or town and the surburban and rural areas contiguous thereto. The power of a station of this class shall not be less than 0.1 kilowatt, and not more than 0.25 kilowatt nighttime and 1 kilowatt daytime, and its service area is subject to interference in accordance with § 3.182.

Note 1: Under NARBA, the power ceiling for Class IV station is 250 watts daytime as well as nighttime. The US-Mexican Agreement permits such stations to operate with up to 1 kilowatt power daytime if they are located further than 100 kilometers (62 miles) from the Mexican border. Pursuant to the US-Mexican Agreement and informal coordination with the other NARBA signatories, the Commission will consider applications for Class IV stations on local channels with daytime powers more than 250 watts, up to 1 kilowatt, if such station is to be located outside of the areas specified in paragraph (c) (1) of this section, and if no objectionable interference would be caused (under the standards set forth in the pertinent international agreement) to a duly notified station in Mexico, Haiti, or any foreign country signatory to NARBA.

Note 2: All authorizations of new or changed Class I-B, Class II-B, Class II-D, Class III or Class IV facilities after October 30, 1961, are subject to whatever interference may be received from, or whatever overlap of 2.0 mv/m and 25 mv/m groundwave contours or overlap of 25 mv/m groundwave contours may be involved with, previously or subsequently authorized Class II-A facilities.

4. Section 3.22 is amended to read as follows:

§ 3.22 Assignment of Class II-A stations

(a) Table of assignments

One Class II-A station may be assigned on each channel listed in in the following table within the designated state or states:

[4133]

Channel (kc)	Existing Class I Station		State(s) in which Class II-A Assignment may be Applied for
670	WMAQ	Chicago	Idaho
720	WGN	Chicago	Nevada or Idaho
780	WBBM	Chicago	Nevada
880	WCBS	New York	North Dakota South Dakota or Nebraska
890	WLS	Chicago	Utah

1020	KDKA	Pittsburgh	New Mexico
1030	WBZ	Boston	Wyoming
1100	KYW	Cleveland	Colorado
1120	KMOX	St. Louis	California or Oregon
1180	WHAM	Rochester	Montana
1210	WCAU	Philadelphia	Kansas, Nebraska or Oklahoma

(b) Minimum service to "white" areas.

No Class II-A station shall be assigned unless at least 25% of its nighttime interference-free service area or at least 25% of the population residing therein receives no other interference-free nighttime primary service.

(c) Power. Class II-A stations shall operate with not less than 10 kw power nighttime.

(d) Protection. (1) Protection by Class II-A stations to other stations. The co-channel Class I-A station shall be protected by the Class II-A station to its 0.1 mv/m contour daytime and its 0.5 mv/m 50% skywave contour nighttime. All other stations of any class authorized on or before Oct. 30, 1961, shall normally receive protection from objectionable interference from Class II-A stations as provided in § 3.182.

(2) Protection to Class II-A stations. A Class II-A station shall normally receive daytime protection to its 0.5 mv/m groundwave contour and nighttime protection to the contour to which it is limited by the co-channel Class I-A station.

(e) Applications not complying with this section. Applications for Class II-A stations which do not meet the requirements of paragraphs (b) and (c) of this section will be returned without further consideration.

[4134]

5. In § 3.24, paragraph (b) is amended; present paragraph (i) is redesignated paragraph (j); and new paragraph (i) is added; as follows:

§ 3.24 Broadcast facilities; showing required.

* * * * *

(b) That objectionable interference will not be caused to existing stations or that if interference will be caused, the need for the proposed service outweighs the need for the service which will be lost by reason of such interference. (For special provisions concerning interference from Class II-A stations to stations of other classes authorized after October 30, 1961, see Note 2 to § 3.21 and § 3.22(d). That the proposed station will not suffer interference to such an extent that its service would be reduced to an unsatisfactory degree. (For determining objectionable interference, see § § 3.182 and 3.186.)

* * * * *

(i) That, in the case of an application for a Class II-A station (see § 3.22), 25% or more of the area or population within the nighttime interference-free service contour of the proposed station receives no nighttime interference-free primary service from another station.

6. In § 3.25, paragraphs (a) and (b) are amended to read as follows:

§ 3.25 Clear channels; Classes I and II stations.

* * * * *

(a) On each of the following channels, one Class I station will be assigned, operating with power of 50 kw: 640, 650, 660, 670, 700, 720, 750, 760, 780, 820, 830, 840, 870, 880, 890, 1020, 1030, 1040, 1100, 1120, 1160, 1180, 1200 and 1210 kc. In addition, on the channels listed in this paragraph, Class II stations may be assigned as follows:

[4135]

(1) On 670, 720, 780, 880, 890, 1020, 1030, 1100, 1120, 1180 and 1210 kc, one Class II-A unlimited time station, assigned and located pursuant to the provisions of § 3.22.

(2) On the channel 750 kc, an unlimited time Class II station located at Anchorage, Alaska.

(3) On the channel 760 kc, an unlimited time Class II station located at San Diego, California.

(4) On any of the channels listed in this paragraph (to the extent consistent with the assignments provided in subparagraphs (1), (2), and (3) of this paragraph), unlimited time Class II stations located in Alaska, Hawaii, Virgin Islands, or Puerto Rico, which will not deliver more than 5 microvolts per meter groundwave day or night or 25 microvolts per meter 10 percent time skywave at night at any point within the continental limits of the United States excluding Alaska.

(5) On any of the channels listed in this paragraph (to the extent consistent with the Class I, Class II-A, and Anchorage and San Diego Class II assignments provided in this paragraph, and, in the case of limited time stations, subject to the restrictions contained in § 3.38), limited time and daytime only stations, as follows:

(i) In Alaska, Hawaii, Puerto Rico and Virgin Islands.

(ii) Within the continental United States excluding Alaska, where the station would operate with facilities authorized as of October 30, 1961.

Note 1: In view of special circumstances arising from the provision of pre-sunrise broadcast service on 640 kc at Ames, Iowa, applications will be accepted for broadcast operations on 640 kc between 6:00 a.m. central standard time and local sunrise at Ames, Iowa, with not to exceed 1 kw power: Provided, That such applications will be acted upon only after and in light of the decision reached in Docket No. 11290.

Note 2: In view of special circumstances arising from the provision of a service during some nighttime hours by a Class II station operating on 830 kc at New York, N. Y., (i.e. from 6: 00 a.m. to local sunrise and from sunset at Minneapolis to 10:00 p.m. E.S.T.) applications will be accepted for such operation: Provided, That they will be acted upon only after and in light of the decision reached in Docket No. 11227.

Note 3: On the frequency 770 kc, two Class I stations may be assigned.

Note 4: See NARBA concerning priority for Canadian Class I-B and Cuban Class I-C assignments on 640 kc.

[4136]

Note 5: See NARBA concerning Cuban Class II-E assignment on 660, 670, 760, 780, 830, 1020, 1030, and 1120 kc.

Note 6: See US-Mexican Agreement concerning Mexican use of 660, 760, and 830 kc.

(b) To each of the following channels there may be assigned Class I and Class II stations: 680, 710, 810, 850, 940, 1000, 1060, 1070, 1080, 1090, 1110, 1130, 1140, 1170, 1190, 1500, 1510, 1520, 1530, 1540, 1550, and 1560 kilocycles.

Note 1: See NARBA and the US-Mexican Agreement concerning a Cuban Class II-E assignment on, and Mexican use of, 1030 kc.

Note 2: Class I and Class II stations on 1540 kc shall deliver not over 5 microvolts per meter groundwave or 25 microvolts per meter 10 percent time skywave at any point of land in the Bahama Islands, and such stations operating nighttime (i. e., sunset to sunrise at the location of the Class II station) shall be located not less than 650 miles from the nearest point of land in the Bahama Islands.

7. Section 3.28(a) is amended to read as follows:

§ 3.28 Assignment of stations to channels.

(a) The individual assignments of stations to channels which may cause interference to other United States stations only, shall be made in accordance with the provisions of this part for the respective classes of stations involved. (For determining objectionable interference, see §§ 3.22, 3.182, and 3.186.)

8. In § 3.182, the introductory text and subparagraphs (1) (i) and (2) of paragraph (a) are amended; paragraph (c) is added; and paragraphs (s) (t) and (v) are amended, as follows:

§ 3.182 Engineering standards of allocation.

(a) Sections 3.21 to 3.24, inclusive, govern allocation of facilities in the standard broadcast band of 535 to 1605 kc. § 3.21 establishes three classes of channels in this band, namely, clear channels for the use of high-powered stations, regional channels for the use of medium-powered stations, and local channels for the use of low-powered stations. The classes and power of standard broadcast stations which will be assigned to the various channels are set forth in § 3.21. The classification of the standard broadcast stations are as follows:

(1) * * *

[4137]

(i) The Class I stations in Group I-A are those assigned to the channels allocated by § 3.25(a), on which, except to the extent provided by that section and by § 3.22, duplicate nighttime operation is not permitted. The power of these stations shall not be less than 50 kilowatts. The Class I stations in this group are afforded protection as follows:

Daytime: to the 0.1 mv/m groundwave contour from stations on the same channel, and to the 0.5 mv/m groundwave contour from stations on adjacent channels.

Nighttime: to the 0.5 mv/m, 50skywave contour from stations on the same channel, and to the 0.5 mv/m groundwave contour from stations on adjacent channels.

* * * * *

(2) Class II stations are secondary stations which operate on clear channels with powers not less than 0.25 kw nor more than 50 kw, except that Class II-A stations shall not operate nighttime with less than 10 kw. Class II stations are required to use a directional antenna or other means to avoid causing interference within the normally protected service areas of Class I stations or other Class II stations (for special rules and standards concerning Class II-A

stations, see § 3.22). These stations normally render primary service only, the area of which depends on the geographical location, power, and frequency. This may be relatively large but is limited by and subject to such interference as may be received from Class I stations. However, it is recommended that Class II stations be so located that the interference received from other stations will not limit the service area to greater than the 2.5 mv/m groundwave contour nighttime and 0.5 mv/m groundwave contour daytime, which are the values for the mutual protection of this class of stations with other stations of the same class (except that Class II-A stations are normally protected to their 0.5 mv/m groundwave contour daytime, and nighttime to the limit imposed by the co-channel Class I-A station).

*　　*　　*　　*　　*

[4138]

(s) The existence or absence of objectionable groundwave interference from stations on the same or adjacent channels shall be determined by actual measurements made according to the method hereinafter described, or, in the absence of such measurements, by reference to the propagation curves of § 3.184. The existence or absence of objectionable interference due to skywave propagation shall be determined by reference to the appropriate propagation curves in Figure 1 or Figure 1a or Figure 2 of § 3.190.

(t) In computing the fifty (50) percent and the ten (10)percent skywave field intensity values of a station operating on a clear channel specified in § 3.25 (a), use shall be made of the appropriate curve set forth in Figure 1a of § 3.190, "Skywave Signals for 10% and 50% of the Time." In computing the fifty (50) percent and ten (10) percent skywave field intensity values of a station operating on a clear channel specified in § 3.25 (b), use shall be made of the appropriate curve set forth in Figure 1 of § 3.190, entitled "Average Skywave Field Intensity (corresponding to the second hour after sunset at the recording station)." In computing the ten (10) percent skywave field intensity values of a regional channel station, use shall be made of the appropriate curve in Figure 2 of § 3.190, entitled "10 percent Skywave Signal Range." The curves in Figure 1 of § 3.190 are drawn for a radiated field of 100 mv/m at one mile in the horizontal plane from a 0.311 wavelength antenna. The curves in Figure 1a and Figure 2 of § 3.190 are drawn for a radiated field of 100 mv/m at one mile at the vertical angle pertinent to transmission by one reflection. In computations based on Figure 1, the pertinent vertical angle shall be determined by use of Figure 6 of § 3.190. In computations based on Figures 1a or 2 of § 3.190, the pertinent vertical angle shall be determined by use of Figure 6a of § 3.190.

* * * * *

(v) Protected service contours and permissible interference signals for broadcast stations are as follows (for Class I and Class II-A stations, see § 3.182 (a)):

Class of station	Class of channel used	Permissible power	Signal intensity contour of area protected from objectionable interference 1/		Permissible interfering signal on same channel 2/	
			Day 3/	Night	Day 3/	Night 4/
I-A	Clear	50 kw	SC 100 uv/m ... AC 500 uv/m ...	SC 500 uv/m (50% .. skywave) 7/ AC 500 uv/m 3/	5 uv/m	25 uv/m 7/.........
I-B	Clear	10 kw to 50 kw	SC 100 uv/m AC 500 uv/m ...	SC 500 uv/m (50% skywave) AC 500 uv/m 3/	5 uv/m	25 uv/m ....
II-A	Clear	0.25 kw to 50 kw (daytime) 10 kw to 50 kw (nighttime)	500 uv/m	500 uv/m 3/.........	25 uv/m ..	25 uv/m ....
II-B and II-D ..	Clear	0.25 kw to 50 kw	500 uv/m	2500 uv/m 3/ 5/ ...	25 uv/m ..	125 uv/m
III-A	Regional	1 kw to 5 kw	500 uv/m	2500 uv/m 3/........	25 uv/m ..	125 uv/m ....
III-B	Regional	0.5 to 1 kw night and 5 kw day	500 uv/m	4000 uv/m 3/	25 uv/m ..	200 uv/m ....
IV	Local	0.1 to 0.25 kw night and 0.1 to 1 kw day	500 uv/m	Not prescribed 6/	25 uv/m ..	Not prescribed 6/

1/ When a station is already limited by interference from other stations to a contour of higher value than that normally protected for its class, this contour shall be the established standard for such station with respect to interference from all other stations.

2/ For adjacent channel, see paragraph (w) of this section.

3/ Groundwave

4/ Skywave field intensity for 10 percent or more of the time.

5/ These values are with respect to interference from all stations except Class I-B, which stations may cause interference to a field intensity contour of higher value. However, it is recommended that Class II stations be so located that the interference received fromClass I-B stations will not exceed these values. If the Class II stations are limited by Class I-B stations to higher values, then such values shall be the established standard with respect to protection from all other stations.

6/ See paragraph (a) (4) of this section.

7/ Class I-A stations on channels reserved for the exclusive use of one station during nighttime hours are protected, from co-channel interference on that basis. On the frequency 770 kc, two Class I stations may be assigned.

SC = Same channel.

AC = Adjacent channel.

9. In § 3.185, paragraph (b), and the introductory text of paragraph (d) are amended, and new paragraph (k) is added, as follows:

§ 3.185 Computation of interfering signal from a directional antenna.

* * * * *

(b) For signals from stations operating on Class I-B clear channels (those specified in § 3.25 (b)), in case of determining skywave interference from an antenna with a vertical pattern different from that on which Figure 1 of § 3.190 is predicated (the basis of the night mileage separation tables), it is necessary to compare the appropriate vectors in the vertical plane.

* * * * *

(d) Examples of the use of skywave curves on Class I-B clear channels:

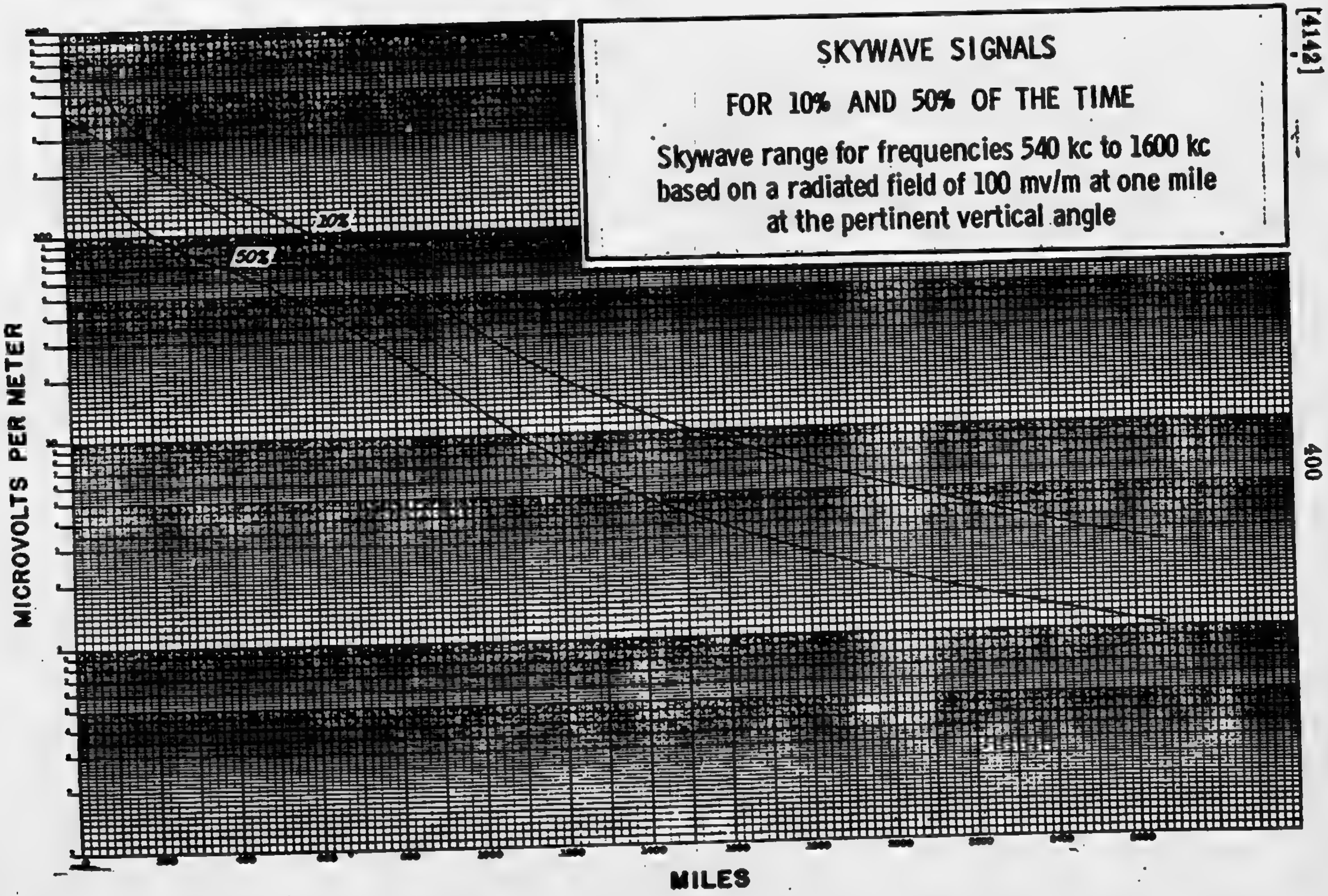
* * * * *

(k) For signals from stations operating on Class I-A clear channels (those specified in § 3.25 (a)), skywave interference is determined by using the 10% curve of Figure la of § 3.190, entitled "Skywave Signals for 10% and 50% of the Time." The pertinent angle of departure is to be determined by use of Figure 6a of § 3.190, in a manner similar to that described in paragraph (g) of this section for regional stations. An example of the determination of skywave interference in this situation is as follows: Assume a Class I-A station and a proposed Class II-A station, operating on the same channel, are separated 1450 miles and that the 0.5 mv/m - 50% skywave contour of the Class I-A station is located 740 miles from the station. The distance from the Class II-A station to the protected contour of the Class I-A station is 710 miles and from Figure 6a the critical angles of radiation are 5° to 9°. If the vertical pattern of the antenna of the proposed Class II-A station is such that between these angles the maximum radiation is 34 mv/m at one mile, the value of the 10% field as read from Figure la is multiplied by 34/100 to determine the interfering 10% field intensity at the 0.5 mv/m - 50% skywave contour of the I-A station, which would be 0.025 mv/m.

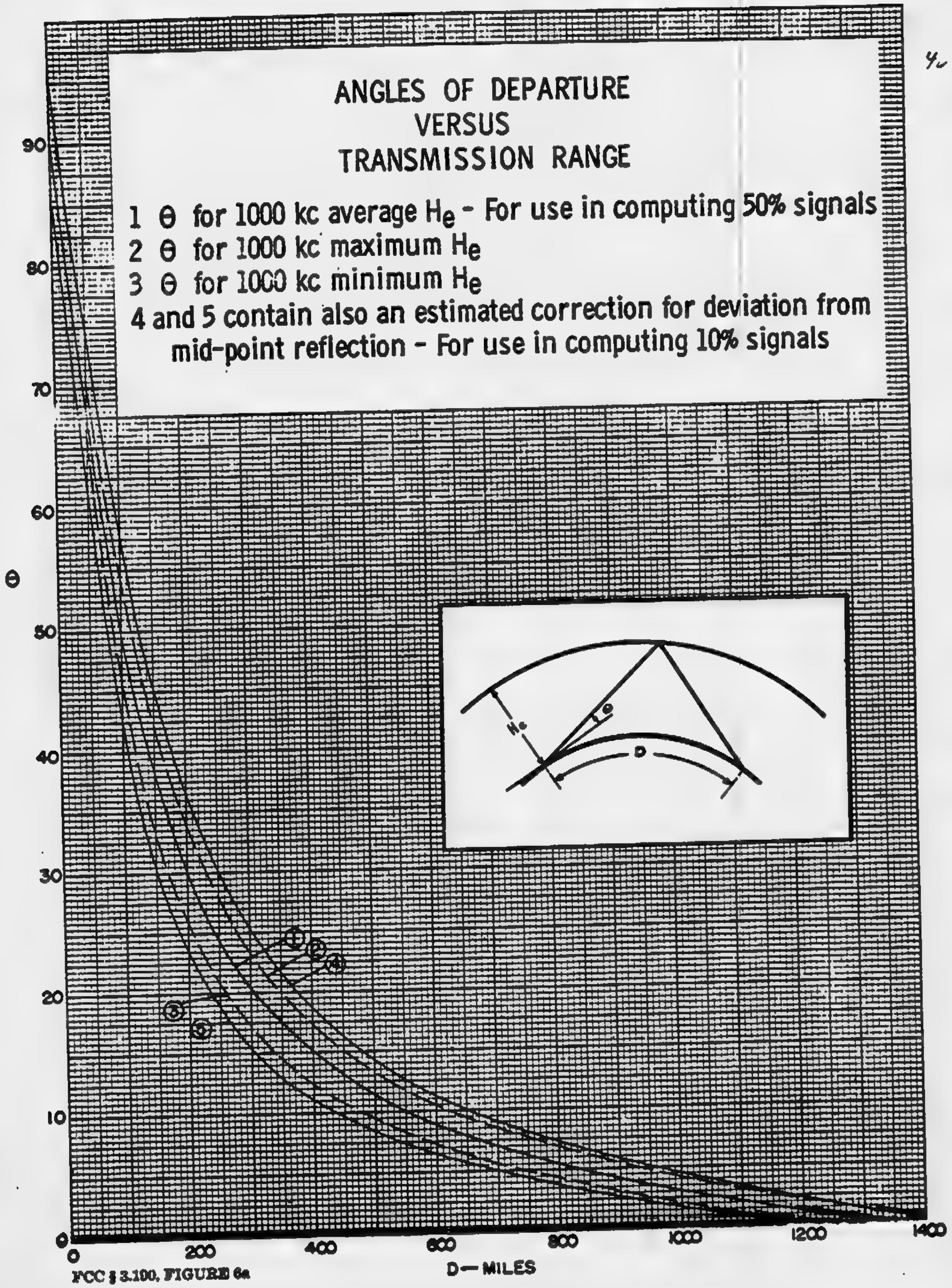
10. Section 3.190 is revised by adding new Figure 1a, and modifying the legend to the title on Figure 6a, and amending the text to read as follows:

§ 3.190 Engineering Charts.

This section consists of the following Figures: 1, 1a, 2, R3, 5, 6, 6a, 7, 8, 9, 10, and 11.



FCC § 3.190 Figure 1a



FCC § 3.100, FIGURE 6a

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE (Docket No. 6741)

I dissent to the decision adopted by the majority in this proceeding.

After sixteen years of spasmodic consideration it has now been decided to cut the baby in half by breaking down half of the clear channels and by putting aside a consideration of greater power for Class IA stations to an indefinite date.

The majority states that it has given "due recognition" to a resolution passed by the United States Senate in 1938, which resolution was intended to inhibit our freedom to permit Class IA stations to operate with powers greater than 50 kw. I submit that a resolution passed twenty-three years ago, by members no longer in the Senate should not be given the effect of law, particularly since no other country in the world places such a restriction on station operating power. To penalize the American public by depriving it of more reliable radio service is, to my mind, highly unwarranted. It is to be noted that the majority is postponing consideration of this matter with the hope that it will be settled by 1964. Since the Commission finds it appropriate to give "due recognition" to the Senate resolution today, I find it difficult to expect that the resolution will not be accorded the same recognition in the future.

I formally proposed, to my fellow Commissioners, a plan for settlement of this proceeding, which proposal was rejected. My plan, while being in the nature of a compromise between the private interests of the parties in the proceeding, did not take on the aspects of a compromise of the public interest as does the majority's decision.

I proposed that the rules be amended to permit each Class IA station to increase power up to 750 kw and that these stations be given a period of one year to file appropriate applications. I proposed that at the end of the year period each channel be duplicated by the assignment of unlimited time Class II stations which would protect either the Class IA stations' 50 kw secondary service area or, in the alternative, the secondary service area resulting from their newly authorized or proposed secondary service with increased powers.

By following this course I believe that a substantial improvement in secondary service could be accomplished and that new Class II facilities could be authorized in deserving areas without the undue administrative procedures adopted herein. This solution appears to me to offer the most substantive improvement in standard broadcast service with a minimum of gimmicks and causes for delay.

Permit me to analyze what the majority's decision accomplishes in the light of the objectives of the proceeding. The purpose of the hearing has been to bring more and better radio service to vast areas which are without a dependable service. It is estimated that one-half the total land area of the United States (excluding Hawaii and Alaska), consisting of 3.5 million square miles, is without nighttime primary service. How does the majority intend to remedy the situation? It is going to impose a freeze on 53 channels to permit the expedited consideration of 11 prospective applications for special Class II A stations, each one being so highly limited by interference that it can be expected to render nighttime primary service to but scant populations. Evidence in this record indicates that a total of approximately 50 thousand square miles will be the recipient of this new service.

Since the decision requires that at least 25% of the areas (to be served by prospective Class II A stations) be without primary service, it can be expected that with full implementation of the plan 12.5 thousand square miles which are not now receiving ground wave service would receive such service. This presumes that there would be applicants willing to build 10 kw stations employing expensive directional antennas serving remote and not too remunerative areas. I submit that the Commission's offer of special processing rules to bring new service to less than one percent of the area in the United States which is without such service is hardly the decision the country has been waiting for the last 16 years. Had the Commission deliberately swept the Clear Channel proceeding under the rug, it could not have done so more effectively.

The majority's method of determining which channel is to be duplicated and which channel is to remain in status quo for further consideration is strained. As an example, 1120 kc is to be duplicated and not considered for higher power because of adjacent channel interference considerations. The Commission has no standards for skywave interference to adjacent channel skywave service, yet adjacent channel interference is the precise reason given for failure to consider Station KMOX, St. Louis, for higher power. On the other hand, the majority is willing to consider 700 kc eligible for higher power while the frequencies on either side of 700 kc are virtually saturated with stations that operate at night. This inconsistency is not explained. Moreover, the majority declines to put a Class II A station on 660 kc because of possible interference to a station in Alaska. In this day of directional antennas, this reason, like others given for the manner of disposition of the clear channels, is of little or no substance. The Alaska station is entitled to no greater protection than any other Class II station. But fundamentally I consider it inappropriate to pick and choose between the IA stations on a quasi-engineering basis. Each Class IA station could employ greater power and by the use of directional antennas protect all foreign stations as required by treaty obligations.

My proposal to permit Class IA stations to increase powers to 750 kw would eliminate daytime "white areas" and would increase the quality of skywave service at night. These stations, by extending their daytime primary coverage and nighttime skywave services to points one and a half times more distant than they are presently serving, would substantially overcome some of the deficiencies which presently exist in the standard broadcast band. Moreover, my suggested allocation would permit our domestic stations to overcome interference from foreign stations without derogating any of our treaty commitments.

I lack the confidence of the majority that its decision will result in any substantive consequence. I submit that it imposes an unwarranted freeze to foster eleven peanut whistles which may never be constructed. Little else is accomplished.

[4146]

STATEMENT OF COMMISSIONER JOHN S. CROSS CONCURRING IN PART AND DISSENTING IN PART

After having this proceeding pending before it for over 16 years (since February 20, 1945), I consider it unfortunate that the majority of this Commission has finally offered the public what, in my opinion, is only a half-solution.

The United States has 25 Class I-A Clear Channels by virtue of international agreements. Under the majority decision, 13 of these Class I-A Clear Channels are to be duplicated on a controlled basis while action on the other 12 is to be deferred. I doubt that the basis for selecting which channels go into the one category and which in the other will ever be understood fully by the public, thereby subjecting the Commission to possible criticism that it acted arbitrarily in this regard.

In my opinion, the reasons of the majority for duplicating 13 of the 25 Class I-A Clear Channels on a controlled basis are sound and sufficient. However, I consider these reasons just as valid for those 12 channels on which action is deferred as they are for those 13 channels that are to be duplicated. Accordingly, I would treat all of them alike and duplicate then all on a controlled basis. This, in my opinion, would not only be fairer, but would also obviate any possible criticism of arbitrariness. In addition, it would strengthen our defense of these channels from foreign infringement. Moreover, it would eliminate the

the necessity for deferring the processing of applications for new stations on any frequencies within 30 Kc of the 12 Class I-A Clear Channels that are not being duplicated -- a matter of considerable consequence since 23 (of the 107 available) frequencies are thereby involved.

[4200]

PETITION FOR REHEARING ON BEHALF OF CLEAR CHANNEL BROADCASTING SERVICE (CCBS)

* * * * *

[4204]

PETITION FOR REHEARING

Clear Channel Broadcasting Service (hereinafter referred to as CCBS), by its attorneys, pursuant to Section 405 of the Communications Act and Section 1.191 of the Rules, hereby petitions the Commission to reconsider and set aside the Report and Order adopted herein on September 13, 1961, and released on September 14, 1961.[1] In support thereof, it is stated as follows:[2]

I. STANDING AND IDENTITY OF CCBS

A. Members

1. CCBS, one of the original parties to the instant proceeding, is an informal organization composed of the following twelve licensees of Class I-A standard broadcast stations:

[4205]

	Call Letters and Location	Frequency (kc)	Licensee
1.	KFI, Los Angeles, Calif.	640	Earle C. Anthony, Inc.
2.	WSM, Nashville, Tenn.	650	WSM, Inc.
3.	WLW, Cincinnati, Ohio	700	Crosley Broadcasting Corp.
4.	WGN, Chicago, Illinois	720	WGN, Inc.
5.	WSB, Atlanta, Georgia	750	Atlanta, Newspapers, Inc.
6.	WJR, Detroit, Michigan	760	The Goodwill Stations, Inc.
7.	WFAA, Dallas, Texas	820	A. H. Belo Corp.

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[1] FCC Mimeo 61-1106.

[2] See next page.

	Call Letters and Location	Frequency (kc)	Licensee
8.	WBAP, Fort Worth, Texas	820	Carter Publications, Inc.
9.	WHAS, Louisville, Kentucky	840	WHAS, Inc.
10.	WHO, Des Moines, Iowa	1040	Central Broadcasting Co.
11.	WHAM, Rochester, N.Y.	1180	Genesee Broadcasting Corp.
12.	WOAI, San Antonio, Texas	1200	Southland Industries, Inc.

B. Origin

2. The origin of CCBS goes back to a meeting held in Chicago in May of 1934. The meeting was attended by representatives of various Class I-A stations who shared a common concern over the then mounting pressures to duplicate or break down the then remaining clear channel frequencies by assigning more than one fulltime station on each frequency. Although the November 11, 1928 allocation had set aside 40 frequencies on each of which only one station was authorized to operate during nighttime

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[2] This petition is submitted within 30 days (computed according to Section 1.18 of the Rules) from the date of public release of the full text of the Report and Order in this proceeding. Petitioner is aware of the recent ruling by the Commission (20 R.R. 1559) to the effect that a petition for reconsideration of a decision in a rulemaking proceeding may be filed within 30 days of publication of the decision in the Federal Register. This petition is presented somewhat in advance of the final date which would be applicable under the foregoing ruling in order to obviate any possible contentions by interested parties in the future that it was not timely filed.

hours in order to "give good service to rural and remote listeners,"[3] by May of 1934 seven of the original 40 clear channel frequencies had been broken down by the assignment of a second fulltime station on each of the seven frequencies,[4] a number of applications seeking additional fulltime authorizations on clear channel frequencies had been filed during the early part of 1934 and Mexico had announced the assignment of fulltime stations on 19 U.S. clear channel frequencies.

C. Participation in 1936 and 1938 Clear Channel Hearings

3. As a result of the meeting held in Chicago in May of 1934, a joint petition was filed with the Commission on August 7, 1934 by several of the present Class I-A stations. As a result, the Commission announced on October 30, 1934, that "a survey will be made for the purpose of determining the service available to the people of the United States and the type of station that the listeners in rural areas are dependent upon for the service" (FCC P.N. 11326). This survey was followed by hearings held in 1936 and 1938 (Dockets 4063 and 5072-A) for the purpose of determining what could be done to improve broadcast service.[5] The primary issues

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[3] See Exhibits 1 and 2 of CCBS Comments filed herein on August 15, 1958.

[4] See Exhibits 1 and 2 of CCBS Comments filed herein on August 15, 1958.

[5] Further details concerning these events are set forth in the "Summary History of Allocation in the Standard Broadcast Band" filed herein on behalf of CCBS on January 12, 1948.

dealt with the still present questions of the extent to which Class I-A frequencies should remain free of duplication and the minimum and maximum powers which should be authorized respecting Class I-A stations.[6]

4. In the 1936 and 1938 clear channel hearings, the Clear Channel Group, the predecessor to CCBS, advocated that a mimimum of 40 Class I-A frequencies be retained and that all Class I-A stations be authorized to operate with power in excess of 50 kw in order to improve service to rural and remote areas and populations.

D. Membership Qualifications

5. In 1941 members of the Clear Channel Group formed Clear Channel Broadcasting Service which had the following three self-imposed qualifications:

a. A member must be the licensee of a Class I-A station.

b. A member must be interested in preserving the channel on which his station operates as a clear (unduplicated) channel.

c. A member must be the licensee of a Class I-A station which is not owned or controlled by a network.

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[6] These issues were first debated in 1924 when several stations, including KFI and WLW, sought to increase operating power from 1 kw to 5 kw. The issues were again debated in the fall of 1930 when a hearing was held to determine which of a number of applicants would be authorized to operate with 50 kw. General Order 42 had been amended on June 16, 1930, so as to provide that 50 kw (25 kw on a regular basis and 25 kw on an experimental basis) could be used on 20 of the 40 clear channel frequencies.

[4208]

E. Participation in Instant Proceeding

6. When the instant proceeding was initiated on February 20, 1945, CCBS became a party to the proceeding and has actively participated in all stages of the hearing. CCBS has uniformly urged that service can be improved to rural and remote areas only by preserving the too few existing Class I-A frequencies and authorizing all Class I-A stations to operate with power in excess of 50 kw. The Report and Order released herein on September 14, 1961 retains the power ceiling of 50 kw, breaks down 13 of the Class I-A frequencies[7] and leaves for a future decision the question of whether duplication or higher power or a combination thereof will be authorized respecting the remaining 12 Class I-A frequencies.[8]

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[7] Including the frequencies on which CCBS member stations WGN (720 kc), WSB (750 kc), WJR (760 kc) and WHAM (1180 kc) operate.

[8] One of which is already duplicated (770 kc) and two of which (640 and 830 kc) are subject to "special circumstances" so that applications for partial duplication at Ames, Iowa and New York City will be accepted and acted on in light of decisions to be rendered in Dockets 11290 and 11227. KFI (640 kc) is a member of CCBS.

II. SUMMARY OF ACTION TAKEN IN THE NOTICES OF APRIL 15, 1958 AND SEPTEMBER 22, 1959 AND SEPTEMBER 14, 1961 REPORT AND ORDER

A. February 20, 1945 11 Hearing Issues (Part I)

7. When the instant proceeding was commenced in February of 1945, the number of Class I-A frequencies had been reduced from 40 to 24 (See Exhibits 1 and 2 of CCBS Comments filed herein on August 15, 1958 regarding the details of the breakdowns).[9] In addition, a 25th frequency (1030 kc), which was then classified domestically and internationally as a Class I-B frequency, has been subsequently classified internationally as a Class I-A. The February 20, 1945 Notice, which commenced Part I of the instant proceeding, specified the following eleven issues (1 R.R., Part 1, Page 53:1iii):

(1) What recommendation concerning the matters covered by this order the Commission should make to the Department of State for changes in provisions of the North American Regional Broadcasting Agreement.

(2) Whether the number of clear channels should be increased or decreased and what frequencies in the standard broadcast band shall be designated as I-A channels and as I-B channels.

(3) What minimum power and what maximum power should be required or authorized for operation on clear channels.

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[9] One of the 24 (770 kc) had not in fact been "clear" since 1941 because of the authority granted KOB, Albuquerque, New Mexico to operate fulltime on the frequency in addition to WABC, New York City.

[4210]

(4) Whether and to what extent the authorization of power for clear channel stations in excess of 50,000 watts would unfavorably affect the economic ability of other stations to operate in the public interest.

(5) Whether the present geographical distribution of clear channel stations and the areas they serve represent an optimum distribution of radio service and whether the fair, efficient, and equitable distribution of radio service among the several states and communities specified in Section 307(b) of the Communications Act requires a geographical redistribution at this time.

(6) Whether it is economically feasible to relocate clear channel stations so as to serve those areas which do not presently receive service.

(7) What new rules or regulations, if any, should be promulgated to govern the power or hours of operation of Class II stations operating on clear channels.

(8) What changes the Commission should order with respect to geographical location, frequency, authorized power or hours of operation of any presently licensed clear channel station.

(9) Whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas.

(10) The extent to which the service areas of clear channel stations overlap and the extent to which this involves a duplication of program service.

(11) What recommendation, if any, the Commission should make to the Congress for the enactment of additional legislation on the matters covered by this Order.

B. April 15, 1958 Further Notice (Part II)

(1) Resolution of Issues 1, 2, 7, 9, 10 and 11

8. Six of the 11 issues were resolved in the manner indicated by the Further Notice of Proposed Rule Making (Part II) released herein

on April 15, 1958 as follows:

a. Issue 1. The issue has been rendered moot.

b. Issue 2. There is no practicable basis for increasing the number of clear channel frequencies, and it would not be in the public interest to decrease the number thereof.

c. Issue 7. The issue is rendered moot by the decisions reached in Dockets 8333, 12274 and 12729.

d. Issues 9 & 10. The pertinent record evidence is "too outdated to provide a sound basis for judgment * * *."

e. Issue 11. Enactment of additional legislation is not necessary.

(2) Proposed Resolution of Issues 3-6 & 8

9. With respect to the unresolved five issues (Nos. 3, 4, 5, 6 [10] and 8), the April 15, 1958 Notice proposed, in pertinent part, as follows:

a. A maximum power ceiling of 50 kw should be retained with respect to 12 Class I-A frequencies (660, 670, 720, 770, 780, 880, 890, 1020, 1100, 1120, 1180 and 1210 kc).

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[10] It was resolved that the record failed "to support the desirability of outright relocation of clear channel stations * * *."

(1) On five of the 12 frequencies (660, 770, 880, 1100 and 1180 kc), additional Class I fulltime stations (one on each frequency) should be assigned in specified western states, the new Class I station and the existing Class I-A station to operate with power of 50 kw employing directional antennas so as to afford mutual protection.

(2) On the remaining seven of the 12 frequencies (670, 720, 780, 890, 1020, 1120 and 1210 kc), additional Class II fulltime stations (one on each frequency) should be assigned in underserved areas, the existing Class I-A station not being required to directionalize.

(3) Processing of applications for new and expanded daytime facilities on the 12 Class I-A frequencies should be deferred until reasonable opportunity has been provided for the assignment of the proposed additional fulltime stations.

b. Resolution of the question of authorizing higher power (in excess of 50 kw) for the Class I-A stations on the remaining 12 Class I-A frequencies (640, 650, 700, 750, 760, 820, 830, 840, 870, 1040, 1160 and 1200 kc) should be deferred and the status quo should be retained, daytime and nighttime.

c. Should the separate KOB proceeding be resolved by assigning KOB to 770 kc, 1030 kc will remain available for a fulltime Class I assignment at a location other than Albuquerque in addition to WBZ, Boston.

C. September 22, 1959 Third Notice (Part III)

(1) Proposed Resolution of Issues 3-6 & 8

10. In the Third Notice of Further Proposed Rule Making released September 22, 1959 (Part III), the Commission proposed, in pertinent part, to resolve Issues 3, 4, 5, 6 and 8 as follows:

a. Defer final resolution of the question of whether Class I-A stations should be authorized to operate with power in excess of 50 kw.

b. The existing fulltime operation in Fairbanks, Alaska on 660 kc (KFAR) and in Albuquerque, New Mexico (KOB) should be maintained and the Class I-A stations on the frequencies (WNBC, New York and WABC, New York) should continue to operate as presently authorized.[11]

c. Additional fulltime stations (one on each frequency) should be authorized to operate within specified states on the remaining 23 Class I-A frequencies, the new stations to operate with a minimum power of 10 kw and to directionalize so as to "provide a satisfactory degree of protection" to the pertinent Class I-A stations.

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[11] WNBC and WABC each operate on a non-directional basis with power of 50 kw.

[4214]

D. September 14, 1961 Report and Order

(1) Resolution of Issues 3-6 & 8

11. In the Report and Order released herein on September 14, 1961, Issues 3, 4, 5, 6 and 8 were resolved as follows:

a. Existing or additional Class II stations (one on each frequency) may operate fulltime, within specified locations, on each of the following 13 Class I-A frequencies; 670, 720, 750, 760, 780, 880, 890, 1020, 1030, 1100, 1120, 1180 and 1210 kc. [12]

(1) 750 kc is reserved for Class II-B use by KFQD, Anchorage, Alaska, with a maximum power of 10 kw. KFQD must protect the 0.1 mv/m daytime groundwave and 0.5 mv/m nighttime 50% skywave contours of WSB, Atlanta, Georgia.

(2) 760 kc is reserved for Class II-B use by KFMB, San Diego, California with a maximum power of 5 kw. KFMB must protect the 0.1 mv/m daytime groundwave and 0.5 mv/m nighttime 50% skywave contours of WJR, Detroit, Michigan.

(3) On each of the remaining Class I-A frequencies listed above (Par. 11a.), one new fulltime Class II-A station will be permitted to operate within specified states (see Rule 3.22(a)). Such new

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[12] It appears that 890 kc was inadvertently omitted from the list of frequencies set forth in Par. 35. Existing stations KFQD and KFMB will be permitted to change their frequencies to 750 and 760 kc, respectively.

[4215]

stations must operate with a minimum power of 10 kw (and a maximum of 50 kw), must protect the 0.1 mv/m daytime groundwave and the 0.5 mv/m nighttime skywave 50% contours of the co-channel Class I-A station and must provide the first nighttime primary service to either 25% of the nighttime interference-free primary service area or to 25% of the population residing therein.

(4) Applications for new daytime or limited time stations (Class II-D) on any of the 25 Class I-A frequencies to be located within the continental United States will not be accepted for filing and such applications now on file will be dismissed (Par. 56 and Rule 3.25(a)(v)).[13]

(5) Applications for new or changed facilities on any of the frequencies located within 30 kc of the above-noted 13 Class I-A frequencies are subject to Rule 1.351(a).

(6) The assignment of Class II stations on the 13 Class I-A frequencies "at least limit and at worst frustrate the future possibilities for employing * * *" (Par. 18) the use of higher power on the Class I-A stations operating on the 13 Class I-A frequencies.

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[13] The degree to which existing Class II-D stations assigned to the pertinent Class I-A frequencies may prosecute modification applications is not specifically spelled out in the Report and Order or in the new rules. However, Rule 3.25(a)(5)(ii) implies that modification applications will not be processed.

b. Two Class I fulltime stations may be assigned on 770 kc, one of the remaining 12 Class I-A frequencies (Note 3, Rule 3.25(a)).[14] The exact form of operations which will be permitted on the two Class I stations (WABC, New York, and KOB, Albuquerque, New Mexico) will be determined in the proceedings to be held as a result of the May 1960 decision of the Court of Appeals in American Broadcasting Company v. FCC, 280 F. 2nd 631, 20 R. R. 2001 (Pars. 82-85).[15]

c. Although Par. 29 of the Report and Order released September 14, 1961 states that the status quo will be maintained respecting 640 kc and 830 kc, two more of the remaining 12 Class I-A frequencies, Rule 3.25 is in fact amended so as to accept applications for operation during nighttime hours by WOI, Ames, Iowa, on 640 kc and WNYC, New York City on 830 kc. The exact form of operation for WOI

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[14] 770 kc was inadvertently omitted from the list of frequencies set forth in Rule 3.25(a).

[15] Although 770 kc is included among the 12 Class I-A frequencies concerning which the Commission has apparently deferred final judgment on the question of higher power for the Class I-A stations assigned thereto (Pars. 18-21), it would appear that higher power is foreclosed for any Class I–A station on 770 kc in view of the decision to authorize two full-time Class I stations on the frequency which would "at least limit and at worst frustrate the future * * *" possibility of authorizing higher power for a Class I-A station on 770 kc (Par. 18).

and WNYC is left open for final decision in Dockets 11290 and 11227 (Pars. 73-76).[16]

d. With respect to the remaining 9 Class I-A frequencies (650, 660, 700, 820, 840, 870, 1040, 1160 and 1200 kc), final decision is deferred as to whether higher power for the Class I-A stations assigned thereto should be authorized, [17] or whether additional full time stations should be assigned to the frequencies or whether a combination of higher power and duplication should be employed respecting these frequencies (Pars. 24, 25, 29-33 and 63).[18]

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[16] Although 640 and 830 are included among the 12 Class I-A frequencies concerning which the Commission has apparently deferred final judgement on the question of higher power for the Class I-A stations assigned thereto (Pars. 18-21), it would appear that higher power for KFI and WCCO is foreclosed in view of the contemplated action of authorizing WOI and WNYC to operate during nighttime hours on 640 and 830 kc which would "at least limit and at worst frustrate the possibility * * *" of higher power for KFI and WCCO (Par. 18).

[17] Yet, the Commission concluded "there is insufficient basis before us for finding that the public interest would be served by authorizing higher power * * *" (Par. 20).

[18] Until September 1, 1964 (or an earlier date, if so announced), applications to operate for the first time at any particular location or any non-Class I-A frequency 30 kc or less removed from any of these 9 Class I-A frequencies will not be granted (Rule 1.351(b)(2)). Any application by stations now operating on any of these frequencies to increase power or hours of operation will be placed in the pending file if it appears that a grant of the application would "risk prejudice" to possible future uses of the pertinent Class I-A frequencies (e.g., higher power, duplication, etc.) (Rule 1.351(b)(3)).

III. Errors Contained in September 14, 1961, Report and Order.

A. Failure to Recognize Precise Nature of Basic Question.

12. Paragraph 1 of the September 14, 1961, Report and Order erroneously states that the instant proceeding was commenced on February 20, 1945, "largely as a result of insistent claims that the clear channel concept * * * is wasteful of valuable spectrum space and otherwise not in the best interests of efficient utilization of the frequencies involved." The record fact is that the Commission's February 20, 1945, Press Release and the February 20, 1945, Designation Order accompanying it both make it clear that the Commission initiated this proceeding, on its own motion, in an attempt to find a solution to the long standing problem of improving the technical quality of standard broadcast (AM) service provided to the millions of persons who reside in "white areas," i.e., areas which do not receive a single satisfactory (in terms of reception) primary (groundwave) signal. [19/] Paragraph 2 correctly recognizes that the Commission's primary objective in allocating AM frequencies is to provide "some service of satisfactory signal strength to all areas of the country."

13. Although all areas of the country presently receive "some service of satisfactory signal strength" during daytime hours,

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[19/] Inseparably involved is the problem of providing second, third and fourth satisfactory signals to residents of areas receiving but 1 (gray), 2 or 3 primary (groundwave) signals.

it is beyond dispute that the record in this proceeding (as well as all other information available to the Commission) supports the premise of the February 20, 1945, Notice that large areas and populations do not receive any adequate nighttime broadcast service. As the Commission itself concluded in its September 22, 1959, Third Notice, 57.99% of the total land area of the continental United States, in which reside some 25.6 million people, did not receive a single satisfactory nighttime primary signal as of January of 1957. The additional fulltime stations assigned since that date have not affected in any substantial way the above-noted white area statistics.[20] Accordingly, there is no basis for the assertion in Par. 6 of the September 14, 1961, Report and Order that "perhaps as many as" 25 million people within the continental United States "are estimated to be outside the range of usable nighttime groundwave service." Paragraph 6 (as well as other portions of the September 14, 1961, Report and Order)[21] ignores the fact that although the bulk of the white area (74.8%) lies west of the Mississippi River, the bulk of the white area population (71.3%) lives east thereof (Par. 10 of Third Report).

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[20] This is shown by the fact that the addition of some 536 fulltime stations between May 4, 1947, and January of 1957 reduced the white area insignificantly (60.59% to 57.99%). (Third Notice, Par. 10). During the same period the white area population increased from some 23.2 million to some 25.6 million. As the Commission recognized in Par. 13 of the September 14, 1961, Report and Order, the white area population has probably increased since January 1, 1957.

[21] E.g. Pars. 36 and 83.

[4220]

14. Paragraph 1 of the September 14, 1961 Report and Order states with imprecision that the action taken respecting the 25 Class I-A frequencies was designed to "improve service" in the "most practicable manner" in the standard broadcast band. As shown above, the basic question to be resolved in this proceeding is the most practicable method of improving service to the numerous white area populations in the East and in the West. The Report and Order is correct in the assumption[22] that the clear channel frequencies afford the only possible means of improving service to white area populations. However, the Report and Order erroneously assumes that service to white area populations can be improved significantly by the creation of new nighttime primary service by new fulltime stations

operating on Class I-A frequencies.[23] This assumption is contrary to all of the evidence of record. The record overwhelmingly supports the conclusion reached by the Commission in Paragraph 41 of its April 15, 1958, Further Notice that "improvement of nighttime service throughout most of the existing white areas must be provided, if at all, by new or improved skywave service" (emphasis added).

15. Thus, the September 14, 1961, Report and Order erroneously fails to recognize that the precise basic question to be

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[22] E.g. Par. 7.

[23] E.g., Pars. 22, 34, 41, 44, 46, 54, 55, 61, 64, 81, 85a, 94, 97, 98 & 101.

resolved in this proceeding is the best practicable method of improving service to white area populations which, if to be done in any significant degree, must be done by creating new or improved skywave service. Of course, any improvement of nighttime groundwave service to white area populations is desirable, provided it is not created at the expense of prohibiting new or improved nighttime skywave service to white area populations.

B. Failure to Improve Service to White Area Populations

16. Although the September 14, 1961 Report and Order states that the action taken was designed to "improve service" to white areas,[24] the fact is that the action taken will not result in any significant improvement of service to white area populations and will forever bar any significant improvement through the use of higher power on the Class I-A frequencies duplicated.

17. Initially, it may be noted that the proposed duplication of 13 Class I-A frequencies is obviously an inadequate attempt to improve service to white area populations in view of the facts that (1) it will degrade rather than improve existing nighttime skywave service, (2) it will

not create any new nighttime skywave service, and (3) the only new service created will be nighttime groundwave service.[25]

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[24] See footnote 23; supra.

[25] As shown above in Par. 14 hereof, the Commission has previously correctly concluded that nighttime groundwave service cannot be provided to any significant portion of the white areas.

[4222]

18. To portray graphically the known fact that creation of new groundwave service will not significantly improve nighttime service to white area populations, CCBS has retained Andrew D. Ring and Associates, Consulting Engineers, to analyze the improvement of service which would result if the 13 Class I-A frequencies were to be duplicated as set forth in Rules 3.22 and 3.25(a)(1)-(3).[26]

19. The Report and Order recognizes that the new Class II stations authorized to operate on 750 and 760 kc will not improve service to white area populations (Par. 35). As shown in the Engineering Statement of Howard T. Head, which is hereto attached and made a part hereof, the 11 new Class II-A stations operating on the pertinent 11 Class I-A frequencies would provide no nighttime skywave service at all and could be expected to provide interference-free nighttime groundwave service to existing white areas and white area populations consisting of 41,582 square miles and only 234,575 people respectively, or 2.41% of the existing 1,725,095 square miles of white area and 0.916% of the existing white area population of 25.6 million people. The specific details are as follows:[27]

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[26] It appears that 890 kc was inadvertently omitted in Par. 34 of the Report and Order.

[27] All figures relate to nighttime interference-free groundwave service. Assumptions used are set forth in attached Engineering Statement of Howard T. Head.

[4223]

	Freq.(kc) & Location	White Area[28] Served	White Area Population Served
1.	670, Gooding, Idaho	4,121	21,026
2.	720, Hawthorne, Nevada	2,964	8,644
3.	780, Fallon, Nevada	2,482	7,554
4.	880, Holdredge, Nebraska	10,060	89,063
5.	890, Beaver, Utah	5,230	8,469
6.	1020, Lovington, New Mexico	2,964	18,304
7.	1030, Lusk, Wyoming	3,832	9,775
8.	1100, Springfield, Colorado	2,169	4,064
9.	1120, Oakridge, Oregon	1,277	15,944
10.	1180, Hamilton, Montana	1,301	6,731
11.	1210, Pratt, Kansas	5,182	45,001
	Totals	41,582	234,575

20. It is thus abundantly clear that the proposed duplication of 13 Class I-A frequencies will provide no significant improvement of nighttime service to white area populations. As Commissioner Lee correctly stated in his dissent, the 11 new Class II-A stations, if constructed, "can be expected to render nighttime primary service to but scant populations." It should also be noted that the 11 new Class II-A stations would not provide nighttime service to a single one of the white area

[4224]

population of 18.27 million residing east of the Mississippi River and would serve only 3.115% of the 7.35 million white area population residing west of the Mississippi River.

21. The foregoing facts demonstrate conclusively that the purported solution of the white area problem set forth in the September 14, 1961 Report and Order is not a solution at all. For this reason alone, the

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[28] Square Miles.

Commission should reconsider and set aside the Report and Order and issue a modified Report and Order taking action which would improve nighttime service to white area populations. As shown below in Part III D hereof, the only realistic way in which service can be significantly improved is through the authorization of operating power in the order of 750 kw for each of the Class I-A stations assigned to the existing 25 Class I-A frequencies.

C. Failure to Afford Required Adjudicatory Modification Hearings

22. The September 14, 1961 Report and Order modified the licenses of the Class I-A stations assigned to the 13 Class I-A frequencies [29] on which additional fulltime Class II stations are authorized to operate (Rules 3.22 and 3.25(a)(1)-(3)). Adjudicatory hearings required by Section 316 of the Communications Act have not been held.

[4225]

Should the Commission resolve, contrary to the record evidence, that the Rules should be amended so as to authorize additional full-time stations on these 13 Class I-A frequencies, no such full-time stations may be assigned to any such frequency without first affording the Class I-A stations concerned a section 316 adjudicatory hearing. As shown in the attached Engineering Statement of Howard T. Head, the Class I-A stations authorized to operate on the 13 Class I-A frequencies would destroy vast portions of the nighttime skywave service beyond the 0.5 mv/m 50% skywave contour now provided by the Class I-A stations, which service is now protected by Rule 3.182(v).[30]

23. It is respectfully submitted that upon reconsideration of the September 14, 1961 Report and Order, it should be recognized that the primary objective of the proceeding is to improve nighttime service to

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[29] WMAQ (670), WGN (720), WSB (750), WJR (760), WBBM (780), WCBS (880), WLS (890), KDKA (1020), WBZ (1030), KYW (1100), KMOX (1120), WHAM (1180), and WCAU (1210).

white area populations, that such improvement can be made only by improving the nighttime skywave service now afforded to such populations and that existing skywave service should be extended and improved rather than curtailed. However, if upon reconsideration it is decided to degrade rather than improve existing nighttime skywave service by the assignment of new fulltime stations on Class I-A frequencies, and the Class I-A frequencies so duplicated include any of those to which CCBS member

[4226]

stations are assigned, such CCBS members hereby assert their rights to a Section 316 adjudicatory hearing before such duplications are finalized. In connection therewith, the individual petitions for rehearing filed simultaneously hereby by CCBS member stations WGN, WSB, WJR, and WHAM are hereby incorporated herein and made a part hereof.[31]

D. Failure to Resolve Higher Power Question

(1) 5 kw was "super power" in 1924

24. At the Third National Radio Conference held in 1924, the question was debated as to whether the then maximum power limitation should be increased from 1 kw to 5 kw. Those opposing the requested increase in power referred to 5 kw as "super power." In spite of the objections raised, the Conference correctly concluded as follows:

> "It has been conclusively demonstrated by experimental work during the past year that only by the use of higher power can static and other kinds of interference be overcome, and that some general increase over the 1,000 watt limitation now imposed is therefore desirable."

25. The Department of Commerce accepted the above-noted recommendation and announced that "licenses for use in broadcasting of power

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[30] Also, as shown in the attached Engineering Statement of Howard T. Head, a serious question is raised as to whether protection will in fact be afforded to the 0.5 mv/m 50% skywave contour because of the D. A. suppression ratios.

to 5,000 watts on a purely experimental basis will be issued." [32]

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[31] Likewise incorporated herein and made a part hereof is the individual petition for rehearing filed simultaneously herewith by CCBS member KFI which shows the invalidity of Note 1 to Rule 3.25(a).

[32] Radio Service Bulletin 92, Dec. 1, 1924, Page 11.

[4227]

By the time of the Fourth Radio Conference held in 1925, experimentation with 50 kw power was being carried out with the approval of the Department of Commerce. The actual experience with "super power" led Secretary of Commerce Herbert Hoover to state as follows:

> "A year ago we were fearful of the effect of greater power. We were told by some that the use of anything more than 1000 watts would mean excessive blanketing, the blotting out of smaller competitors, the creation of large areas into which no other signals could enter. Some of the most pessimistic even warned us that our tubes would explode under the impact of this tremendous force. But our experience so far leads to the opinion that high power is not only harmless in these respects but advantageous. Power increase has meant a general rise in broadcasting efficiency; it has meant clear reception; it has helped greatly to overcome static and other difficulties inherent in summer broadcasting, so as to give us improved all-year service. Whatever the limit may be, I believe that substantial power increase has come to stay, and the public is the gainer from it."

(2) 50 kw Experimentation, 1928-1930

26. Following the chaos of 1926, when rural reception was completely obliterated because of co-channel interference which eliminated skywave service, and the creation of the Federal Radio Commission in 1927, the November 11, 1928 allocation was promulgated which established 40 frequencies on which only one station was authorized to operate

at night. The amount of power to be used by the stations on these 40 frequencies was determined by General Order 42 dated September 7, 1928 which imposed a maximum power ceiling of 25 kw but provided that power of 50 kw could be authorized on an experimental basis for the next license period.

27. By 1929 most of the clear channel stations were using 5 kw but a few were operating with 50 kw. In the spring and summer of 1929 the Commission conducted surveys to ascertain the extent to which the November 11, 1928 allocation had resulted in improved service to rural areas. The results showed that over the greater part of the country, in terms of area, listeners relied on clear channel stations for broadcasting service. Reports received from the Department of Commerce Supervisors were to the same effect. For example, the Radio Supervisor at Detroit reported:

> "The use of high power on clear channels is the only factor at this time which makes possible any degree of good radio reception to the rural broadcast listener. It would be of far greater benefit to the radio industry and to the public if the number of cleared channels were increased to provide still more diversified reception. * * * When it is remembered that most broadcast listeners, especially those in the country, rely on their radio set entirely for weather reports, time signals, news, education, information and entertainment, it will be appreciated that they should have the best receiving conditions which it is possible from an engineering point of view to furnish, and to impair their reception by abandoning the use of cleared channels is very comparable to placing their radio service on a 1920 basis when it was a plaything and not a public necessity."

28. In the fall of 1929 the proposals of the United States Government at the Hague Conference included the following statement:

> "Power should not be limited on any broadcast channel occupied by a single station. The use of increased power on these channels, if stations are properly located with respect to populous areas, will give improved service to listeners. Experiments with increased power will make it possible to determine the optimum power which it is desirable to use for this class of service." 33/

(3) 1930 50 kw Hearing

29. On June 16, 1930 General Order 42 was amended so as to provide that 50 kw power could be used on not more than 20 of the 40 clear channel frequencies (4 of 8 in each of the five zones). At the time, ten 50 kw stations were operating and five were under construction. Following a hearing, 20 stations were authorized to use 50 kw and the remaining 20 were confined to 25 kw. Even the 20 stations authorized to use 50 kw were licensed on a regular basis for only 25 kw, the additional 25 kw having been licensed on an experimental basis.

(4) 50 kw Maximum Established in 1933

30. Effective October 3, 1933, the Federal Radio Commission's Rules were amended so as to authorize all 40 clear channel stations (rather than just 20) to use power of 50 kw. Nearly all of the clear channel stations operated with power of 50 kw "with a vast improvement in service to the listening public in both urban and rural areas, an increase in the

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33/ Jolliffe, R. 76; Report of the Delegation of the United States of America, International Technical Consulting Committee on Radio Communication, First Meeting, The Hague, September 18-October 2, 1929, p. 261.

rural areas provided with services and no substantial complaint based either on interference or economic considerations." 34/ The October 3, 1933 allocation was continued in effect by virtue of Section 604(a) of the

Communications Act of 1934. No change has ever been made with respect to the maximum power ceiling of 50 kw for Class I-A stations although WLW operated on an experimental basis with power of 500 kw from April 17, 1934 until May 15, 1939 and the question of removing the power ceiling has been explored extensively in hearings held in 1936 (Docket 4063), 1938 (Docket 5072-A) as well as in the instant hearing (Docket 6741).

(5) 1936 Decision on Higher Power of 500 kw

31. Following the 1936 hearing, the Commission's Engineering Department issued a preliminary engineering report on January 11, 1937 which stated as follows on page 8 concerning higher power: [35]

> "While we believe that powers in excess of 50 kw on clear channels are technically sound and are in accord with scientific progress, we recognize that social and economic factors involved in the use of 500 kw may outweigh in importance engineering considerations, and request instructions from the Division as to its desires with respect to regulations on the question of super-power. We feel that, in the matter of super-power, the Commission should give

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[34] Statement of Edwin W. Craig, October 5, 1936, Clear Channel Hearing.

[35] While 5 kw was "super power" in 1924, the term was applied to 500 kw in 1937. Today it is applied to 750 kw.

> full consideration to our report summarizing the economic testimony in the October 5 hearing prior to making a decision.
>
> "We feel that there is a need for increased signal intensity and have recommended that in general power increases are required to better the service to the public. However, we recommend that the regulations in this respect be sufficiently flexible to permit the Commission to judge each individual case upon its merits, particularly as to the needs and economic and social circumstances."

32. In support of the above-noted conclusions, it was stated as follows on pages 23 and 24:

> "In general, the trend of all engineering testimony was toward higher power for all classes of stations. It was clearly indicated that in general the existing empirical standards of the Engineering Department with reference to signal intensities required for good service should be used as a minimum and that in many instances there is needed a higher order of signal intensity to overcome the noise level in cities and the noise level in rural areas, particularly during the summer and in the southern sections of the country.
>
> "The only way to secure increased signal intensity is by increase in radiated power."

* * * * *

> "The greatest controversy and difference of opinion existed with respect to power greater than 50 kw. However, with but one exception, all engineers who testified admitted that where side channel interference was not a factor, powers on clear channels in excess of 50 kw would be a technical advance and would result in an increased signal intensity to remote areas. It is also clear to the Engineering Department that from a technical standpoint any power less than 50 kw on a clear channel is a wasteful use of such frequency on the North American Continent."

[4232]

33. On July 1, 1937 the Engineering Department submitted its "Report on Social and Economic Data" which stated as follows on page 120 respecting higher power: 36/

> "* * * we feel that no one should fear technical progress, and therefore we see no logical reason for an arbitrary defensive regulation which would prevent the future use of power in excess of 50 kw in the event that evidence and data should show conclusively that such power in certain individual cases is in the interest of

the public. It should be noted that in this connection other nations on this continent have licensed stations to use powers greatly in excess of 50 kw and sight should not be lost of this fact from either a technical or economic standpoint."

34. The Commission, upon consideration of the above-noted reports and the evidence of record promulgated proposed rules which were made the subject of a hearing set for June 6, 1938. The proposed rules limited power of Class I-A stations to 50 kw.

(6) 1938 Decision on Higher Power of 500 kw

35. The 1938 Clear Channel hearing was held before a Committee of three Commissioners. [37] The Clear Channel Group (the forerunner of CCBS) urged, as it had in the 1936 hearings, that the power

ceiling of 50 kw should be removed. The Committee's Report stated as follows concerning the use of higher power (Part I):

> "The evidence shows conclusively that, from a technical standpoint, the use of power in excess of 50 kw has a distinct advantage because it provides better quality service to the vast population residing in rural areas and in towns which neither have broadcasting stations of their own nor are located within the primary service areas of any station. The public residing under these circumstances must now rely for their only program service upon distant clear channel stations having not more than 50 kw power. Therefore, from a technical standpoint, it is safe to conclude that the

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[36] Page 121 of the Report recommended that the Commission "consider each individual application [for higher power] on the basis of the evidence presented."

[37] While the 1938 hearing was being held, the 1938 Senate Resolution was adopted on June 13, 1938 (S. Res. 294, 83 Cong. Rec. 8944). As shown herein, this resolution did not amend the Communications Act of 1934 which authorized the Commission to determine the operating power for broadcast stations and its effect, if any, died with that session of Congress.

higher signal intensities produced by greater kilowatt power, with the consequent improvement in technical service, tends to equalize the quality of service rendered to the population in rural areas as compared to the service rendered the population in urban communities more fortunately equipped with broadcast transmission facilities of their own.

"The evidence indicates that there would be no difficulty in securing economic support for the operation of 500 kw stations in the principal markets of the country. However, there is doubt as to whether the necessary number of competitive 500 kw stations could be supported economically in the sections of the country where the need for improvement in signal intensity in rural areas is the greatest."

36. However, the report went on to state:

"The evidence to date is far too meager to warrant this Commission's advocating super power as the only means of improving service to the rural listeners of the nation . . . At a latter date the subject of super power may be reopened and decided more positively upon the basis of more accurate evidence and experience than is available at present."

[4234]

(7) 1961 Decision on Higher Power of 750 kw

37. The question of power in excess of 50 kw was again explored in the instant proceeding which commenced in 1945. The September 14, 1961 Report and Order is somewhat confusing with respect to the disposition of the argument advanced by CCBS that all Class I-A stations should be authorized to operate with power of 750 kw in order to improve nighttime service to white area populations. At several points the Report and Order seems to say that a final decision on the question of removing the power ceiling of 50 kw for Class I-A stations will be deferred until some unspecified date in the future:

a. Par. 18 states "Whether the public interest would be served by authorization of higher power, * * * we do not now decide."

b. Par. 20 states "the question warrants further consideration in the light of * * * the future results flowing from the duplication of 13 Class I-A frequencies."

c. Par. 21 states "We thus leave open and unprejudiced the question of * * * changing the rules affecting the use of the 12 Class I-A channels now left in status quo."

d. Par. 25 states "While we do not reach a decision either for or against the use of higher power * * * ."

38. On the other hand, it appears that the Commission has decided affirmatively that higher power should not be authorized:

[4235]

a. Par. 20 states "* * * we conclude that there is insufficient basis before us for a finding that the public interest would be served by authorizing higher power * * *." This statement presumably applies to all 25 Class I-A frequencies.

b. Par. 18 states that assignment of additional full-time stations on Class I-A frequencies would "at least limit and at worst frustrate the future possibilities of * * *" higher power on these frequencies. Thus the proposal to duplicate 13 Class I-A frequencies appears to be a determination to foreclose authorization of higher power on these frequencies.[37a] Likewise, higher power on 3 of the 12 Class I-A frequencies left in "status quo" appears to be foreclosed because of the contemplated nighttime operations on 640, 770 and 830 kc.

(8) The Question of Higher Power Should be Resolved.

39. Upon reconsideration, the Commission should modify its September 14, 1961 Report and Order so as to state with clarity the precise nature of its decision with respect to the question of higher power.

40. With respect thereto, it is respectfully submitted that no valid grounds exist for deferring a decision on the question of higher power.

As shown above, the question was the subject of intensive hearings in 1936 and 1938 and a decision was deferred at that time on the basis that the evidence was "too meager to warrant" advocating higher power "as the only means of improving service to the rural listeners

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of the nation." This ground is no longer valid today inasmuch as the evidence set forth in the record shows conclusively that higher power and the retention of Class I-A frequencies is the only realistic means of improving nighttime service to white area populations. As shown in Part III B hereof, the proposal to duplicate certain of the Class I-A frequencies will not result in any significant improvement of service to white area populations. In fact, the proposed duplication will be an absolute bar to using the frequencies concerned so as to improve service effectively by means of higher power. As shown in the attached Engineering Statement of Howard T. Head, the 11 new Class II-A stations and the two Class II-B stations on 750 and 760 kc would destroy existing nighttime skywave service, would create no new nighttime skywave service, and would provide a first nighttime primary service to only some 234,575 people or only 0.916% of the total white area population of 25.6 million. On the other hand, if these stations were not authorized and the Class I-A stations on the 13 frequencies were authorized to operate with 750 kw, under the assumptions set forth in the attached Engineering Statement of Howard T. Head a first nighttime primary service would be provided to some 1.8 million people and nighttime skywave service afforded to all of the white area population would be improved substantially (See Table III of Engineering Statement of Howard T. Head). As CCBS has maintained from the outset of the proceeding, all Class I-A stations should be authorized

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to operate with power of 750 kw, and if possible, some I-B frequencies should be converted to I-A status. Because of time zone differences and the fact that one station cannot serve the entire country (DeWitt, R. 4946), it is necessary to divide the country into five regions and authorize stations in each region to operate with power of 750 kw if nighttime skywave service is to be improved in all white areas. If a minimum of 4 signals in each region is to be afforded, at least 4 Class I-A stations in each of the five regions must be authorized to operate with power of 750 kw. The CCBS 20 station plan, [38] which would achieve this result, is not even discussed in the September 14, 1961 Report and Order. Although a specific request was made by the then Chairman of the Commission for the parties to come forward with specific plans designed to improve service to white areas (Chairman Denny, R. 1827 and 3922), CCBS was the sole party to present such a plan. Although the parties included advocates of duplication, no such party submitted any plan looking toward an improvement of service to white areas.

41. Thus, the need recited in 1938 to secure additional evidence as to means other than higher power for improving service to white areas is not a valid reason for deferring at this time a decision on the question

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[38] See pages 39ff of CCBS Brief filed herein on January 12, 1948.

[4238]

of higher power. What other reason does exist for deferring a decision on the higher power question? Par. 20 says there is "insufficient basis" for finding that the public interest would be served by authorizing higher power. However, no attempt is made to support the conclusion with valid reasons. As shown above, the record shows that only through higher power can any real improvement to service to white areas be made. If there are valid reasons for deferring a decision on higher power, then a decision on duplicating Class I-A frequencies should likewise be deferred as the two methods are mutually exclusive.[39] Par. 21 infers that "additional light" may be provided by the experience gained as a result of the duplication of the 13 Class I-A frequencies. However, no clue is given as to what "additional light" is needed or expected. The effects of duplicating all but 25 of the original 40 Class I-A frequencies are well known. These duplications have led to more service to well-served city areas at the expense of degrading service to underserved rural and remote areas (See Exhibits 1 and 2 of CCBS Comments filed August 15, 1958). The duplication of the additional 13 Class I-A frequencies will at best provide a first nighttime primary service to but a handful of the white area populations. There is every reason to believe, in the light of past history, that the Class II-A stations authorized on the 13 frequencies will be moved in the future to centers of population and that additional full-time assignments on the 13 frequencies will be made, with the result that the white area population will be increased rather than decreased. It is thus difficult to see any valid basis for deferring a decision on the higher power question because of the alleged "additional light" to be gained under the duplication of 13 Class I-A frequencies. Par. 21 infers that changes have occurred since the evidence in the record was first adduced which dictate a deferral of a decision on the question of higher power. Again, no supporting reasons are given. Actually, the basic facts concerning the existence of vast white areas and populations and the use of higher power to improve service thereto have not changed in any material way since the 1936 Clear Channel hearings.

42. For all of the above reasons, the Commission should either resolve the higher power question so as to authorize 750 kw for all

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[39] Should higher power be authorized, it may prove feasible to duplicate under controlled conditions. However, duplication at 50 kw will prohibit forever any possibility of higher power.

Class I-A stations or defer a final decision with respect to duplication as well as higher power.

E. Failure to Accord Due Recognition to National Defense and Military Needs

43. The mere fact that some 25.6 million people do not receive a single satisfactory nighttime groundwave service and must rely on skywave service for their only nighttime broadcast service points up the fact that it is of crucial importance from a national defense aspect to preserve and improve nighttime skywave service. What other instantaneous means exist for conveying information to these people during a state of emergency?

44. Although the system is classified, CCBS has been authorized by the U. S. Air Force to state that CCBS is cooperating with the U. S. Air Force in establishing emergency back-up communications. As rapidly as possible, the Air Force desires to operate 60 wpm teletype circuits using the carrier of certain broadcast stations. The stations used will be selected on the basis of their ability to guarantee completely reliable communication. The degree of reliability will hinge upon whether there is interference from other broadcast stations where the signals of such stations can interfere with the path of the Air Force circuits.

45. It seems obvious that the duplication of 13 Class I-A frequencies, which will curtail rather than improve the skywave service provided by the Class I-A stations assigned to these frequencies, will have a serious adverse impact on the usefulness of these frequencies for national defense and military emergency communications. Yet, this factor, although known to the Commission, is not even discussed in the September 14, 1961 Report and Order except for a footnote reference on page 19 that "We recognize the importance of clear channel service to national defense communications and in emergencies * * * ."

[4241]

F. Failure to Recognize Threat of Foreign Duplications

46. If a decision on higher power is deferred, if the 13 Class I-A frequencies are duplicated domestically in the manner set forth in Rule 3.22(a) and if 640, 770 and 830 kc are duplicated as indicated in Notes 1, 2 and 3 to Rule 3.25, it is certain that at the next North American Regional Broadcasting Conference neighboring countries will press demands to assign additional full-time stations on the 25 U. S. Class I-A frequencies. When the 1941 NARBA Agreement was first negotiated in 1937, all foreign countries agreed to assign no nighttime stations on U.S. Class I-A frequencies within 650 miles of the nearest U. S. border. At that time, higher power was being considered for U. S. Class I-A stations. Since that time, the following foreign assignments have been authorized within 650 miles of the nearest U. S. border:

a. 1941 Engineering Conference

660 kc (Mexico)
830 kc (Mexico)

b. Interim Agreement of 1946 [40]

640 kc (Cuba)
670 kc (Cuba)
830 kc (Cuba)
890 (Cuba)

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[40] The U.S. I-A stations were not required, as in the 1951 Agreement, to restrict radiation toward the Cuban stations. Cuba never implemented the 670 and 890 kc assignments.

[4242]

c. 1951 NARBA Agreement

640 kc (Cuba)
660 kc (Cuba)
670 kc (Cuba)
760 kc (Cuba)
780 kc (Cuba)
820 kc (Dominican Republic)
830 kc (Cuba)
880 kc (Jamaica)
1030 kc (Cuba)
1180 kc (Jamaica)

d. 1957 Mexican-U. S. Agreement

660 kc (Mexico)
760 kc (Mexico)
830 kc (Mexico)
1030 kc (Mexico)

47. Thus, past history demonstrates that if we further degrade our own Class I-A frequencies by assigning additional full-time stations and if we retain our power ceiling of 50 kw, we will invite demands, which will be difficult to resist, for additional full-time foreign assignments on our 25 Class I-A frequencies. This serious threat to our natural resources is not considered in the September 14, 1961 Report and Order which confines itself to a reference to the fact that the existing Agreements provide international protection to Class I-A frequencies regardless of the number of full-time stations assigned thereto. Thought must be given as well to the inevitable day when the existing treaties will have to be renegotiated.

G. Failure to Delineate Rational Reasons for Selecting the Class I-A Frequencies to be Duplicated.

48. As Commissioner Lee correctly stated in his dissent, "The majority's method of determining which [I-A] channel is to be duplicated and which channel is to remain in status quo for further consideration is strained." In fact, no rational basis is set forth. This is demonstrated by the fact that the action taken does nothing to solve in any significant way the white area problem and leaves free of domestic duplication only 9 Class I-A frequencies (650, 660, 700, 820, 840, 870, 1040, 1160 and 1200 kc), one of which is duplicated in Alaska (660 kc). As shown above, a minimum of twenty 750 kw stations is required to provide a choice of four signals to all regions of the United States.

49. No duplication of any Class I-A frequency can be justified unless it is demonstrated that such action will improve service to white area populations to a higher degree than any other possible action. Here,

no such showing has been made with respect to the 16 Class I-A frequencies [41] selected for domestic duplication. As shown above, higher power will improve service to white area populations to a much higher degree than will duplication.

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[41] The 13 plus 640, 770 and 830 kc.

[4244]

H. Failure to Recognize Lack of Effect of 1938 Senate Resolution

50. Par. 19 of the September 14, 1961 Report and Order states that at earlier stages of this proceeding, strong objection to the authorization of higher power was expressed by Congress and reference is made to Senate Resolution 294, 75th Congress. It is respectfully submitted that the statement is erroneous in the following particulars:

a. Since this proceeding was instituted in 1945, Congress has expressed no opinion on the question of higher power except the express refusal in 1948 and 1949 [42] to amend the Act so as to prohibit higher power.[43]

b. The 1938 Senate Resolution pre-dated the earliest stages of this proceeding.

c. The 1938 Senate Resolution was not an expression by Congress and was in fact only an expression by the Senators who happened

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[42] E.g., see S. 2231, 80th Congress on which hearings were held in April of 1948.

[43] On Sept. 6, 1961, the House Committee on Interstate and Foreign Commerce adopted a motion directing the Chairman to request the Commission to defer final action on Docket 6741 until the Committee had an opportunity to hold hearings on and consider the merits of pending legislation which would prohibit any further breakdown of the 25 Class I-A frequencies and compel the Commission to grant higher power to any Class I-A station proving that increased power would improve significantly nighttime skywave service to white areas. (Broadcasting Magazine, issue of Sept. 18, 1961, at page 36).

[4245]

to be on the Senate floor when the resolution was offered. One of the Senators on the floor at the time the resolution was offered commented, "We have had no time to consider; no one has ever seen the resolution except, perhaps, the Senator from Montana" (83 Cong. Rec. 8944).

51. Accordingly, it is not accurate to refer to the 1938 Senate Resolution as constituting the "policy of Congress." It is clear as stated by Senator Capehart on the Senate floor on July 20, 1961, "that the resolution passed by the Senate in 1938 (S. Res. 294) did not amend the basic law [which authorizes the Commission to grant higher power as do existing pertinent treaties], died with that session of Congress and is in no way a bar to the authorization of higher power by the FCC." The 1938 Resolution merely expressed the personal views of the Senators who voted for its passage (The Diamond Rings, 183 U.S. 176 at page 184, 1901).

52. That the 1938 Resolution is not a bar to the authorization of higher power should be specifically acknowledged by the Commission.

I. Failure to Resolve Issue 9

53. As already noted, the Further Notice released herein on April 15, 1958 concluded that the listener surveys contained in the record were "too outdated to provide a sound basis for judgment" respecting Issue 9 which posed the question as to "whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas."

[4246]

54. In its Comments filed herein on August 15, 1958, CCBS stated as follows (Pars. 67-69):

> "It is respectfully submitted that the fact that listener surveys set forth in the record are outdated does not lead to the conclusion that the record is too outdated to provide a sound basis for resolving the basic issue posed in this proceeding -- namely, how to improve service to the vast underserved areas and populations. This

problem must be solved regardless of the content of the programs carried over the signals which must be improved from a reception viewpoint. The Commission must first lay the 'tracks for good reception.' After this is accomplished, the Commission may then concern itself, if it is shown to be necessary, [44] * * * with the program content carried by the signals.

"* * * Apart from the legal question as to whether the Commission has authority to consider program content and apart from the issue whether Issue 9 is in fact relevant to the basic question presented in this proceeding, it is respectfully submitted that no changes which have occurred since the closing of the record vitiate the evidence contained in the record which shows that clear channel stations do in fact render a program service particularly suited to the needs of listeners in rural areas.

"* * * To demonstrate this fact, current program information with respect to each member of CCBS is submitted herewith in the attached exhibits 18 through 30. These exhibits demonstrate that clear channel stations are currently meeting the general and particular needs of listeners in rural areas."

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[44] In this connection, it is noted that the Commission's legal right to enter the field of program content was challenged earlier in this proceeding by CCBS (R. 56).

[4247]

55. In the September 14, 1961 Report and Order, no reference is made to the above-noted assertions of CCBS. It is respectfully submitted that upon reconsideration the Commission should adopt these assertions and resolve Issue 9 in accordance therewith.

J. Failure to Resolve Issue 10

56. Issue 10 of the Commission's February 28, 1945 Hearing Notice relates to the duplication of network programs. This issue was the subject of elaborate presentations made by CCBS and NBC and

certain other parties to the proceeding. In the Commission's April 15, 1958 Further Notice, it was stated that the information contained in the record concerning this issue "is too outdated to provide a sound basis for judgment at this time."

57. It is respectfully submitted that upon reconsideration of the September 14, 1961 Report and Order, which fails to mention Issue 10, the Commission should conclude that Issue 10 is irrelevant to the basic considerations involved in this proceeding. Regardless of the extent of duplication of network program services which may have existed prior to 1948 and regardless of the extent of duplication which exists today, the fact remains that vast areas and populations of the United States are presently without adequate broadcast service and that the public interest requires that broadcast service be improved to the extent that it is technically feasible to do so. Due to the nature of the geographical distribution of the population in this country, it is obvious

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that there must be a certain overlapping of groundwave and skywave signals from all classes of stations. The fact that a certain amount of overlapping of signals is bound to exist constitutes no reason for failing to improve service to the underserved areas and populations. Accordingly, the present state of the record with respect to Issue 10 is such as to provide a sound basis for a resolution of the basic question presented the Commission in this proceeding.

K. Failure to State Valid and Consistent Reasons in Support of Conclusions Reached

58. Although the Commission is not required in a rulemaking proceeding of the type involved herein to rely solely on record evidence, it is required in a final decision to spell out valid reasons in support of the conclusions reached. [45] Here, the Commission's September 14, 1961 Report and Order is defective in that it is replete with inconsistencies and unsupported conclusions. A partial list of the inconsistencies

and unsupported conclusions, some of which are referred to above, are set forth below. Upon reconsideration, the Commission should issue a modified Report and Order which eliminates the inconsistencies contained in the September 14, 1961 Report and Order and sets forth valid reasons in support of the modified conclusions reached.

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[45] As the Supreme Court stated in Eastern - Central Motor Carriers' Ass'n. v. U.S., 321 U.S. 194 (1944), rule making action must be "formulated . . . with sufficient explication to enable the parties and ourselves to understand, with a fair degree of assurance, why the Commission acts as it does." (321 U.S. at 211-212).

59. There is no support for the conclusionary recitations in Pars. 1 and 13 that this proceeding was instituted "largely as a result of insistent claims that the clear channel concept * * * is wasteful of valuable spectrum space * * *." All record and non-record facts make it clear that the proceeding was commenced on the Commission's own motion with the primary objective of finding a way to improve service to white areas.

60. Par. 2 correctly recites the fact that the primary objective of an AM allocation plan is to provide "some service of satisfactory signal strength to all areas of the country." However, the action here taken is inconsistent in that it fails to achieve this primary objective (see Part III B hereof).

61. Par. 3 correctly admits that the assignment of more than one fulltime station on the same frequency "dilutes the effective range of nighttime skywave propagation to distant rural areas." However, the action here taken is inconsistent in that it authorizes the immediate elimination of skywave service beyond the 0.5 mv/m 50% skywave contours of Class I-A stations operating on a majority of the 25 Class I-A frequencies.

62. Par. 6 correctly states that the 1947 white area was not

substantially reduced by a 50% increase in fulltime stations between 1947 and 1957. However, the action here taken is inconsistent in that

it purports to reduce white areas by the creation of 11 new fulltime assignments.[46/]

63. Par. 7 correctly states that improvement of service to white areas "must be sought from existing or newly-assigned stations" operating on clear channels. However, there is no mention of the uncontroverted fact, admitted in Par. 41 of the Further Notice released herein on April 15, 1958, that any significant improvement of nighttime service to white areas must come from improving skywave service as it is impossible to provide a satisfactory nighttime groundwave service to all white areas. The action here taken is inconsistent with this basic fact since it (1) reduces existing skywave service, (2) creates no new skywave service and (3) for all practical purposes prohibits the improvement of existing skywave service through use of higher power on at least 16, if not on all, of the 25 Class I-A frequencies.

64. Par. 11 refers to the opportunity provided in the Third Notice released September 22, 1959, to update the record regarding higher power. However, no disposition is made anywhere in the September 14, 1961 Report and Order of the assertions advanced by the parties in response thereto.

[46/] The record shows that as of January 1, 1957, the white area population totaled 25.6 million rather than "perhaps as many as 25 million," the bulk of whom (18.27 million) resided east of the Mississippi River. (Par. 10 of Third Notice released September 22, 1959; see also footnote 3 on page 6 of September 14, 1961 Report and Order).

65. Par. 12 refers to the uncontroverted fact that there is "little prospect of large-scale improvement in primary service." However, the action here taken is inconsistent in that it attempts to improve

service to white areas solely through the vehicle of extending primary service.

66. Par. 13 concludes that it is feasible to assign additional full-time stations on Class I-A frequencies which will provide "needed service" and at the same time preserve the capacity of Class I-A stations to provide service over wide primary and secondary service areas. This conclusion is not supported by any underlying reasons and in fact is inconsistent with the undisputed facts that the contemplated additional fulltime stations will not provide any new nighttime skywave service, will provide a first nighttime primary service to an insignificant portion of the white area population, will curtail existing nighttime skywave service and will prohibit forever any significant improvement of nighttime skywave service on the channels concerned through the use of higher power.

67. Par. 13 correctly acknowledges that the white area population has grown since this proceeding was instituted and will continue to increase in the future in the absence of any action taken to improve service to the white areas. However, the action here taken is inconsistent in that it fails to improve significantly the nighttime service now afforded to white areas.

[4252]

68. No supporting reasons are given for the conclusion set forth in Par. 14 which infers that the "administrative burden" prohibits authorization of higher power for all Class I-A stations. Obviously, no undue administrative burden would be involved in so resolving the question as to the degree to which existing rules concerning Class I-A frequencies should be amended.

69. The "compelling reasons" referred to in Par. 15 are not delineated anywhere in the September 14, 1961 Report and Order.

70. Par. 16 justifies the duplication of the 13 frequencies set forth in Par. 17 on the alleged ground of "the compelling need to go as

substantially reduced by a 50% increase in fulltime stations between 1947 and 1957. However, the action here taken is inconsistent in that

it purports to reduce white areas by the creation of 11 new fulltime assignments.[46/]

63. Par. 7 correctly states that improvement of service to white areas "must be sought from existing or newly-assigned stations" operating on clear channels. However, there is no mention of the uncontroverted fact, admitted in Par. 41 of the Further Notice released herein on April 15, 1958, that any significant improvement of nighttime service to white areas must come from improving skywave service as it is impossible to provide a satisfactory nighttime groundwave service to all white areas. The action here taken is inconsistent with this basic fact since it (1) reduces existing skywave service, (2) creates no new skywave service and (3) for all practical purposes prohibits the improvement of existing skywave service through use of higher power on at least 16, if not on all, of the 25 Class I-A frequencies.

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[46/] The record shows that as of January 1, 1957, the white area population totaled 25.6 million rather than "perhaps as many as 25 million," the bulk of whom (18.27 million) resided east of the Mississippi River. (Par. 10 of Third Notice released September 22, 1959; see also footnote 3 on page 6 of September 14, 1961 Report and Order).

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67. Par. 13 correctly acknowledges that the white area population has grown since this proceeding was instituted and will continue to increase in the future in the absence of any action taken to improve service to the white areas. However, the action here taken is inconsistent in that it fails to improve significantly the nighttime service now afforded to white areas.

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69. The "compelling reasons" referred to in Par. 15 are not delineated anywhere in the September 14, 1961 Report and Order.

70. Par. 16 justifies the duplication of the 13 frequencies set forth in Par. 17 on the alleged ground of "the compelling need to go as

far as possible toward reducing * * *" the nighttime white areas. Inconsistently, the duplication of the 13 Class I-A frequencies will not reduce nighttime white areas in any significant degree.

71. Par. 18 correctly states that duplication of Class I-A frequencies frustrates the future possibility of Class I-A stations on these frequencies operating with power in excess of 50 kw. Inconsistently, the action here taken forecloses the possibility of higher power on 16 Class I-A frequencies (the 13 set forth in Par. 17 plus 640, 770 and 830 kc).[47]

72. Par. 18 states that the question of higher power on the 13 Class I-A frequencies not listed in Par. 17 is left open for future determination (see also Pars. 21 and 25 to this same effect). However,

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[47] With the possible exception of 750 kc.

[4253]

Par. 20 is inconsistent in its conclusion "that there is insufficient basis before us for a finding that the public interest would be served by authorizing higher power * * * ."

73. Par. 19 inaccurately states that the Congress enunciated a policy in the earlier stages of this proceeding expressing "strong objection to the authorization of higher power." The fact is that Congress has never expressed a policy on the question of higher power other than the enactment of Section 303(c) of the Communications Act of 1934 which authorizes the Commission to determine the operating power of broadcast stations. The Senate did adopt a resolution in 1938 (prior to the commencement of this proceeding), but this did not constitute an expression of Congressional policy, did not amend the basic law, and died with the 75th Congress.[48] Inconsistently, the Report and Order makes no mention of the fact that in September of 1961 the House Committee on Interstate and Foreign Commerce (with only one dissenting vote) asked the Commission to defer a final decision in Docket 6741 until a reasonable time after January of 1962 in order to allow time for the House Committee to hold hearings on pending legislation to amend the Communications

Act of 1934 so as to prohibit any further breakdown of any of the 25 Class I-A frequencies beyond that authorized as of July 1, 1961 (Broadcasting Magazine, September 18, 1961, page 36).

48/ See Part III H hereof.

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74. Par. 20 acknowledges that higher power will significantly improve service to white areas, but sets forth the conclusion that the Commission is not persuaded that the objections set forth in the record against the employment of higher power have been sufficiently met. However, the Report and Order is silent as to the nature of the objections and as to the reasons for concluding that the objections have not been overcome by record evidence. It is respectfully submitted that the objections voiced in opposition to higher power are more than overcome by the record evidence for the reasons set forth in the pleadings filed herein by CCBS on January 12, 1948 (Part IV of the Brief), August 18, 1958 (Part IV), and April 1, 1960 (Pars. 58 and 59). For the reasons set forth in Part III D hereof, the Commission should upon reconsideration authorize each of the existing Class I-A stations to operate with power in excess of 50 kw.49/

75. Par. 21 fails to specify what "additional light" is needed and what "additional light" is expected to be gained in the future. Also, there is no specification of the "circumstances which have changed markedly" or of what effect the unspecified changes have on a resolution of the basic issue of improving service to white areas. It is respectfully

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47/ Exhibit 32 of the CCBS Comments filed herein on August 15, 1958, lists the numerous foreign broadcast stations authorized to operate with power in excess of 50 kw.

submitted that in view of the fact the Commission has been exploring the white area problem since 1936 and in view of the fact that all but 25 of the original 40 clear channels have been duplicated, the boundaries of the problem are as definitely established as they ever will be and that a solution to the problem should be reached at this time rather than some time in the indefinite future with respect to "the 12 clear channels not now disturbed." As stated above, higher power should be authorized on these 12 Class I-A frequencies as well as the 13 Class I-A frequencies set forth in Par. 17.

76. Par. 25 concludes that the curtailment of nighttime skywave service on the 13 Class I-A frequencies to be duplicated is justified by "the additional services * * * made possible from new stations in underserved areas." However, no supporting reasons are set forth in the Report and Order which inconsistently ignores the fact that the new full-time stations will afford a first nighttime primary service to but an insignificant portion of the white area population, will curtail rather than improve existing nighttime skywave service (improvement of which affords the only practical basis of improving service to white areas) and prohibits improvement of the existing nighttime skywave service of the Class I-A stations assigned to the frequencies concerned.

77. Par. 27 recites that the decision of choosing the 13 Class I-A frequencies to be duplicated was arrived at "by the painstaking

process of determining and evaluating all the pertinent factors * * *." However, the Report and Order does not set forth a rational basis for the choice exercised (compare Pars. 28-33 and 34-38).

78. Par. 27 recites the "desirability of endeavoring to preserve the potential of at least four reasonably reliable and satisfactory skywave services throughout all white areas." Inconsistently, the Report and Order takes action that for all practical purposes forecloses the

possibility of providing for reasonably reliable and satisfactory skywave services to all white areas, since only nine Class I-A frequencies are left with a real potential for higher power. As shown in the CCBS station plan, there must be a minimum of 20 higher power Class I-A stations if all regions of the country are to receive at least four reliable signals (see Part III D (8) hereof).

79. Par. 30 correctly concludes that the potential for improving skywave service in the West should be preserved. Inconsistently, the remainder of the Report and Order ignores the fact that it is equally if not more important to preserve the potential for improving skywave service in the East in view of the fact that the bulk of the white area population (71.3%, or some 18.27 million people) lives east of the Mississippi River (Par. 10 of Third Notice released September 22, 1959).

80. Pars. 32 and 33 correctly recognize the potential for improvement of skywave service in connection with the 5 Class I-A frequencies specified. Inconsistently, the remainder of the Report and Order fails to recognize that each of the remaining Class I-A frequencies affords a potential for improved skywave service. The Report and Order fails to take advantage of the potential of any one of the Class I-A frequencies by authorizing higher power.

[4257]

81. Par. 34 alludes to "the important and immediate objective of providing nighttime primary service to white areas" and thus inconsistently (as do Pars. 41 and 61) fails to recognize that the addition of new nighttime primary service can not significantly improve service to white areas. Nevertheless, the primary objective of this proceeding is to improve the skywave service now rendered to white areas (see Par. 41 of Further Notice released April 15, 1958, which states "that improvement of service throughout most of the existing white areas must be provided, if at all, by new or improved skywave service").

82. Par. 35 fails to specify the nature of the "immediate objective"

and "possible future goals," and fails to specify the nature of the conflict between the so-called immediate objectives and future goals. A reading of the remaining portions of the Report and Order implies that there is but one objective, namely the improvement of nighttime service to white areas. Accordingly, there is no rational basis for concluding that a proper balance is best achieved by duplicating 13 Class I-A frequencies and preserving the status quo of the remaining 12. As shown

above, the only possible means of achieving the one basic objective is to authorize higher power for each of the existing Class I-A stations.

83. Pars. 35 and 77-81 conclude that 750 and 760 kc should be duplicated to meet "special situations arising out of the entry into force of the United States/Mexican Broadcasting Agreement." No rational reasons are given leading to the conclusion that 750 and 760 kc offer the best solutions to meet these special situations. Admittedly, the duplications do nothing to further the acknowledged primary objective of improving service to white areas.

84. Pars. 36 and 37 correctly conclude that the need for improvement of service in the West "is great" in view of the fact that 74.8% of the white area is located west of the Mississippi River. However, the paragraph inconsistently ignores the fact that the need for improvement of service in the East is likewise "great" in view of the fact that 71.3% of the white area population resides east of the Mississippi River.

85. Contrary to Par. 37, Chicago I-A frequencies do not have a "limited potential * * * for improving skywave service in areas which need it" (see Petition for Rehearing filed simultaneously by WGN, Inc.). Par. 37 refers to requirements of protection to stations in Cuba and Mexico as limiting radiation of Chicago I-A stations to the South and refers to adjacent channel Class I-A operations in New York as limiting

radiation to the East. These statements are not true with respect to 720 kc, and thus constitute no reason for duplicationg 720 kc. The fact that the potential of WGN for improving skywave service to the West is not so great as that of 12 Class I-A channels on which the status quo is reserved constitutes no valid reason for duplicating WGN in as much as WGN operating with higher power will improve significantly nighttime service to significant white areas. Par. 37 ignores the fact that the white areas are not confined to the West.

86. Par. 40 purports to set forth the underlying reasons for designating the particular state or states to which additional fulltime stations are assigned. However, no valid reason is given to support the conclusion that duplicating Class I-A channels in the designated states constitutes "the most fair, equitable and efficient use of the frequency." As shown above, the additional fulltime stations will not improve nighttime service to white areas in any significant way.

87. Par. 44 concludes that the assignment of additional fulltime stations on the Class I-A frequencies concerned "more nearly achieves the objectives of broadcasting in the standard band than does the present utilization of Class I-A clear channels at night by only one station." Inconsistently, no comparison is made of the extent to which the Commission's action will improve nighttime service to white areas as compared to the ultimate action of authorizing higher power for the

Class I-A stations concerned. As shown in Part III D hereof, the ultimate action of higher power will improve nighttime service to white areas to a much higher degree than will the duplication of the channels.

88. Par. 46 gives no underlying reasons in support of the conclusion that "a careful analysis of the entire allocation picture" leads to the conclusion that the additional assignment of Class I-A frequencies "will go furthest toward achievement of our objective." As shown above,

the action taken does not meet the objective of significantly improving nighttime service to white areas. Under the standards proposed, the new Class II stations would provide a first primary service to only 234,575 people, or 0.9% of the white area population of some 25.6 million.

89. Footnote 6 to Par. 47 correctly recognizes "the importance of clear channel service to national defense communications and in emergencies * * *." However, the Report and Order inconsistently takes action which degrades rather than improves existing skywave service.

90. Par. 76 states that the instant Report and Order does not "decide upon or prejudice the decision * * * " Dockets Nos. 11290 and 11227. However, the paragraph inconsistently and prematurely amends the rules so as to establish a basis for resolving these adjudicatory hearings, contrary to the positions advanced by Class I-A stations KFI

[4261]

and WCCO (see Petition for Rehearing filed simultaneously herewith by Earle C. Anthony, Inc.).

91. Par. 83 concludes, inter alia, that "service is substantially more abundant" in the East. This conclusion is inconsistent with Par. 10 of the Third Notice released September 22, 1959, which correctly concludes that 71.3% of the white area population resides east of the Mississippi River.

IV. Upon Reconsideration, a Modified Report and Order Should be Issued

92. For all the reasons set forth above, the Commission should reconsider the Report and Order released herein on September 14, 1961, and issue a modified Report and Order. The modified Report and Order should recognize the following:

(a) The primary objective of this proceeding is to improve nighttime service to white area populations residing within the continental limits of the United States.

(b) The only way in which nighttime service to white area populations can be improved is through new or improved skywave service on Class I-A clear channel frequencies.

(c) The only realistic method of creating new or improved skywave service is by authorizing Class I-A stations to operate with power in excess of 50 kw.

[4262]

(d) A minimum of 20 Class I-A stations operating with power of 750 kw is needed in order to provide four reasonably reliable skywave services to all regions of the United States.

(e) The assignment of additional fulltime stations on Class I-A frequencies prior to authorizing the Class I-A station concerned to operate with power in excess of 50 kw will (1) forever prohibit any significant improvement of skywave service by the Class I-A stations concerned through the use of higher power, (2) lead to demands for additional domestic and foreign fulltime assignments on the Class I-A channels concerned with the result that the white areas will be increased, (3) defeat completely the objective of improving nighttime service to all existing white areas, and (4) possibly jeopardize the use of Class I-A channels for national defense and emergency military communications.

(f) Following authorization of higher power for all Class I-A stations, additional fulltime assignments may be made under controlled conditions on the Class I-A frequencies concerned.

93. If upon reconsideration it is concluded that a resolution of the question of authorizing higher power should be deferred with respect to any of the Class I-A frequencies, it should be likewise concluded that a resolution of the question of assigning additional fulltime stations on any of the Class I-A frequencies must be deferred.

V. Pending Issuance of a Modified Report and Order, the Effectiveness of the September 14, 1961 Report and Order Should be Stayed

94. For the reasons set forth in the "Petition for Stay" filed simultaneously herewith on behalf of CCBS, the effective date of the new rules attached as an appendix to the Report and Order released herein under date of September 14, 1961, should be postponed to a date to be set by a modified Report and Order.

Respectfully submitted,

CLEAR CHANNEL BROADCASTING
SERVICE

By ______________________
Reed T. Rollo

____
Percy H. Russell, Jr.

____
R. Russell Eagan

____
Aloysius B. McCabe

of

Kirkland, Ellis, Hodson, Chaffetz &
Masters
800 World Center Building
Washington 6, D. C.

Attorneys for CCBS

October 16, 1961

[4264]

ENGINEERING STATEMENT
ON BEHALF OF
CLEAR CHANNEL BROADCASTING SERVICE

DOCKET 6741

October 16, 1961

A. D. RING & ASSOCIATES **WASHINGTON, D. C.**

[4265]

A. D. RING & ASSOCIATES
Consulting Radio Engineers
1710 H Street, N. W.
Washington 6, D. C.

October 16, 1961

City of Washington)
) ss
District of Columbia)

Howard T. Head, being first duly sworn, upon oath deposes and says that he is a consulting radio engineer, a partner in the firm of A. D. Ring & Associates, with offices at 1710 H Street, N. W., Washington, D. C. He is a registered professional engineer (Reg. No. 2521) in the District of Columbia. His qualifications as an engineer are a matter of record with the Federal Communications Commission.

The firm of A. D. Ring & Associates has been retained by Clear Channel Broadcasting Service to make engineering studies of the Commission's Report and Order in Docket 6741, released September 14, 1961. The Commission's Order includes provisions for new Class II-A unlimited time stations on eleven of the Class I-A clear channels, and the reassignment of two stations now operating on other channels to two additional Class I-A clear channels. The affected channels are listed in the following table which shows the dominant Class I-A station on each channel, together with

[4266]

the state or states in which the Commission proposes to assign a 10 kw unlimited time station (5 kw for KFMB, San Diego on 760 kc) on each channel.

TABLE I

Class II-A Assignments Proposed on Class I-A Clear Channels

Chan. (kc)	Existing Class I-A Station		State(s) in which Class II-A Assignment may be applied for
670	WMAQ	Chicago	Idaho
720	WGN	Chicago	Nevada or Idaho
750	WSB	Atlanta	Anchorage, Alaska (KFQD)
760	WJR	Detroit	San Diego, Cal. (KFMB)
780	WBBM	Chicago	Nevada
880	WCBS	New York	North Dakota South Dakota or Nebraska
890	WLS	Chicago	Utah
1020	KDKA	Pittsburgh	New Mexico
1030	WBZ	Boston	Wyoming
1100	KYW	Cleveland	Colorado
1120	KMOX	St. Louis	California or Oregon
1180	WHAM	Rochester	Montana
1210	WCAU	Philadelphia	Kansas, Nebraska or Oklahoma

According to the Commission's Order, these Class II-A assignments which are contemplated, with the exception of KFQD on 750 kc and KFMB on 760 kc, are intended to render the maximum possible amount of primary ground wave service to "white areas" at night. Studies have been made to determine the maximum amount of primary service to "white areas" which could be rendered on each of these channels by assignments located in the indicated states. This new primary nighttime service to "white areas" has been compared with the additional nighttime primary service to "white areas" which could be rendered by increasing the power of the dominant stations from 50 kw to 750 kw on each channel. These studies show that the Commission's aim of providing maximum nighttime primary service to existing "white areas" could be far more readily realized by increasing power of the existing Class I-A stations than by assignment of new Class II-A stations to the sparsely populated areas.

Studies were made of the population density in the states listed in the table above, using the most recent population distribution map prepared by the Census Bureau. Assumed locations were chosen for each of the Class II-A stations where it appeared the maximum service to "white areas" would be provided by the new facility. At the same time, care was taken to avoid concentration of Class II-A stations in the more populous states where opportunities for multiple Class II-A assignments would be provided under the new rules. Based on these studies, Class II-A stations were assumed to be operating with 10 kw power at night, employing directional antennas to protect the dominant stations, at the cities given in the following table:

TABLE II

Assumed Class II-A Assignments
On Clear Channels

Channel	Location
670 kc	Gooding, Idaho
720	Hawthorne, Nevada
780	Fallon, Nevada
880	Holdrege, Nebraska
890	Beaver, Utah
1020	Lovington, New Mexico
1030	Lusk, Wyoming
1100	Springfield, Colorado
1120	Oakridge, Oregon
1180	Hamilton, Montana
1210	Pratt, Kansas

Figures 1 through 11 are a series of maps showing the Type B service contours (nighttime interference-free) for the assumed operations listed in Table II. The areas and populations of the "white areas" within the service contours shown on these maps are listed in Table IV.

Figures 12 through 21 are a series of maps showing the Type B service contours (nighttime interference-free) for the Class I-A stations now operating on the channels listed in Table I for both 50 kw and 750 kw operation. These maps show only those portions of the Type B contours of the Class I-A stations where a power increase from 50 kw to 750 kw would result in service to nighttime "white area". Type B service contours of other stations serving these areas are shown.

The following table lists the area and population which would be provided with a first nighttime primary service (Type B) by an increase in power of the indicated stations from 50 kw to 750 kw:

TABLE III

Area and Population Not Now Receiving Primary Nighttime Service Which Would Be Served by an Increase in Power of Class I-A Stations to 750 kw

Channel	Station	Area	Population
670 kc	WMAQ	/1	/1
720	WGN	3,990	70,909 /1
750	WSB	7,542	257,460
760	WJR	9,550	234,868
780	WBBM	/1	/1
880	WCBS	675	24,529
890	WLS	/1	/1

/1 Essentially same as WGN for all Chicago stations.

TABLE III (CONT'D)

Channel	Station	Area	Population
1020 kc	KDKA	2,169	110,180 /2
1030	WBZ	2,070	131,196 /2
1100	KYW	6,282	276,675
1120	KMOX	27,697	609,681
1180	WHAM	5,343	250,801
1210	WCAU	1,130	51,713

/2 The present Type B nighttime service of KDKA on 1020 kc and WBZ on 1030 kc is limited by mutual adjacent-channel skywave interference; thus, a simultaneous power increase would not increase the Type B service rendered, assuming Type B service in this instance to be limited by adjacent-channel skywave interference. The figures given here assume that one station or the other, but not both, increases power to 750 kw.

The following table lists the area and population (all within "white area") which would receive primary service at night if 10 kw Class II-A Stations should be authorized as listed in Table II above:

TABLE IV

Areas Receiving First Primary Nighttime Service From Proposed Class II-A Assignments

Channel	Location	Area	Population
670 kc	Gooding, Idaho	4,121 sq.mi.	21,026
720	Hawthorne, Nevada	2,964	8,644
780	Fallon, Nevada	2,482	7,554
880	Holdrege, Nebraska	10,060	89,063
890	Beaver, Utah	5,230	8,469
1020	Lovington, New Mexico	2,964	18,304
1030	Lusk, Wyoming	3,832	9,775
1100	Springfield, Colorado	2,169	4,064
1120	Oakridge, Oregon	1,277	15,944
1180	Hamilton, Montana	1,301	6,731
1210	Pratt, Kansas	5,182	45,001

It will be seen that power increases for the Class I-A stations would be many fold more effective in accomplishing the

Commission's stated purpose of serving "white" area at night than the proposal to assign Class II-A stations to the areas indicated.

The Class I-A Stations, all operating with 750 kw power, would provide primary nighttime service to a total population of 1,886,816 persons in 64,378 square miles/1 who do not now receive primary service during nighttime hours. In contrast, the eleven Class II-A stations would provide nighttime primary service to only 234,575 persons in 41,582 square miles who do not presently receive primary service during nighttime hours.

Not only would the power increases for the clear channel stations result in substantial improvement in Type B service rendered at night, but these increases would also provide substantial improvement in all types of skywave service (Types D, E and F) rendered at night by the clear channel stations. The potential improvement is illustrated by exhibits previously submitted by Clear Channel Broadcasting Service in this proceeding.

In preparing Figures 12 through 21, exhibits previously submitted by Clear Channel Broadcasting Service have been relied on to the greatest extent possible. These exhibits have been employed to determine the location of the Type B service contours of the Class I-A stations for operating powers of both 50 kw and 750 kw, and these exhibits have also been

---

/1 Total population and area figures for "White Area" gaining Type B nighttime service from power increase of Class I-A stations considers only one Chicago station gaining "white area" and, considers KDKA gaining white area at 750 kw while WBZ remains at 50 kw.

used to establish the location of nighttime "white areas" not now receiving primary service.

For Stations WCBS, WCAU and KMOX, the Type B contours have been taken from exhibits prepared by this firm and submitted by the Columbia Broadcasting System in this docket.

KYW on 1100 kc operating with a power of 750 kw has been assumed to be non-directional, employing an antenna having an electrical height of 220 degrees. This antenna has been assumed to be sectionalized at the mid-point to improve the anti-fading characteristics. Station WBZ on 1030 kc has been assumed to employ a 200 degree conventional radiator for 750 kw operation, and Station WJR on 760 kc has been assumed to employ 220 degree conventional radiator for 750 kw operation, to improve anti-fading characteristics. Studies of the treaty requirements of the North American Regional Broadcasting Agreement indicate that on certain of the clear channels, the antenna systems for the 750 kw operation of the Class I-A stations must be modified from those upon which the earlier exhibits were based. Time has not permitted the preparation of new antenna designs as a basis for the studies in this affidavit, and the earlier work has been relied on. General studies of the antenna characteristics, however, indicate that by giving proper attention to the antenna design, especially anti-fading characteristics, service gains closely approaching those reflected in the earlier exhibits in this proceeding can be achieved while meeting the NARBA requirements.

The Class II-A stations were assumed to protect the dominant Class I-A stations in accordance with the requirements of the Commission's Order. The nighttime limitations of the Class II-A stations were calculated using the propagation curves adopted for this purpose by the Commission. Ground wave service contours for the Class II-A stations were calculated in the usual manner.

[4272]

The population counts listed in the tables above are based on the 1960 census and were made by laying out the pertinent contours on

Minor Civil Divisions Maps. If 50% or more of a minor civil division fell within the contour, the entire division was included in the count, except for population centers within the division; otherwise the entire division was excluded. Cities and towns having a population greater than 2500 were not counted where the field strength was less than 2 mv/m. Areas were measured from the original maps, using a polar planimeter.

A study has also been made of the suppression of the signal toward the dominant Class I-A clear channel stations required by the Commission's Order for Class II-A stations operating in the states listed in Table I. This suppression has been compared with the maximum values of suppression considered feasible for a directional antenna operating with 10 kw power as given by the Commission's TRR Report No. 1.2.7, by Harry Fine.

[4273]

TABLE V

Performance Required for Directional Antennas Employed by Class II-A Stations

Freq. (kc)	Class I-A Station	Location of Class II-A Station	Distance from Class I-A Station (mi.)		Perm. Rad. Toward Dominant Station (mv/m)		Lowest Radiation for 10 kw Dir. Ant. Recommended by TRR 1.2.7 (mv/m)
			Min.	Max.	Max.	Min.	
670	WMAQ	Idaho	1180	1500	40	17	54
720	WGN	Nevada	1345	1700	66	24.5	54
780	WBBM	Nevada	1345	1700	66	24.5	54
880	WCBS	Nebraska	1140	1585	49	15	54
890	WLS	Utah	1110	1445	33	14	54
1020	KDKA	N. Mexico	1270	1750	64	17.5	54
1030	WBZ	Wyoming	1680	2080	132	43	54
1100	KYW	Colorado	1070	1500	33	11.5	54
1120	KMOX	Oregon	1440	1830	96.5	32	54
1180	WHAM	Montana	1325	1905	125	25	54
1210	WCAU	Kansas	1050	1480	37	12	54

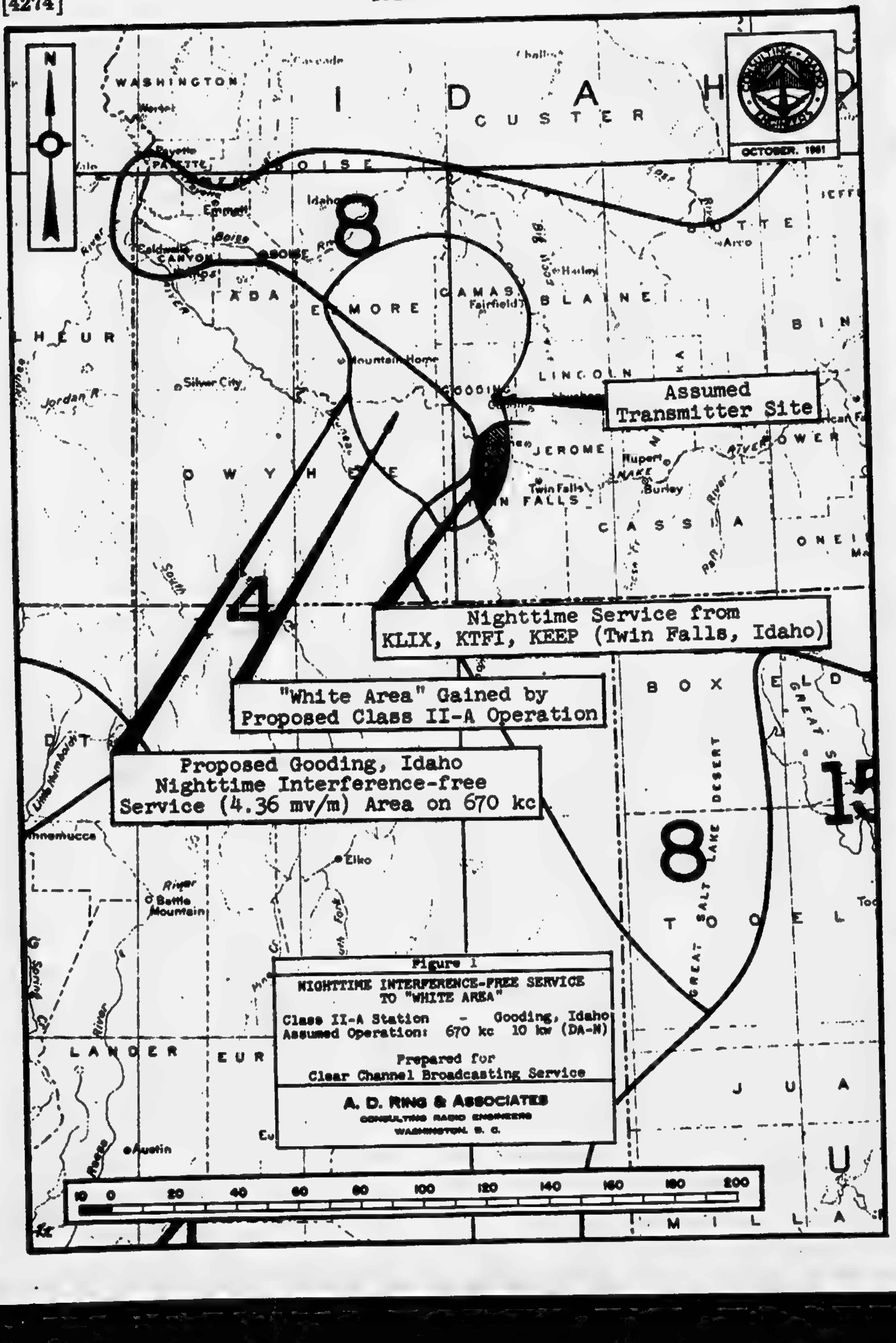
Affiant states that the calculations and exhibits in this report were made by him personally or under his direction and that all facts contained herein are true of his own knowledge except where stated to be on information or belief, and as to those facts, he believes them to be true.

/s/ Howard T. Head
Affiant

Subscribed and sworn to before me this 16th day of October, 1961.

/s/ Elsie Roache
Notary Public

My Commission expires: March 31, 1963



N
OCTOBER, 1961
I D A H O
WASHINGTON
CUSTER
BOISE
BUTTE
ADA
ELMORE
CAMAS
BLAINE
LINCOLN
GOODING
JEROME
TWIN FALLS
CASSIA
OWYHEE
BOX ELDER
TOOELE
JUAB
LANDER
8
8
4
15
Assumed Transmitter Site
Nighttime Service from KLIX, KTFI, KEEP (Twin Falls, Idaho)
"White Area" Gained by Proposed Class II-A Operation
Proposed Gooding, Idaho Nighttime Interference-free Service (4.36 mv/m) Area on 670 kc
Boise
Caldwell
Emmett
Mountain Home
Silver City
Fairfield
Hailey
Arco
Twin Falls
Rupert
Burley
Elko
Battle Mountain
Austin
GREAT SALT LAKE DESERT
10 0 20 40 60 80 100 120 140 160 180 200

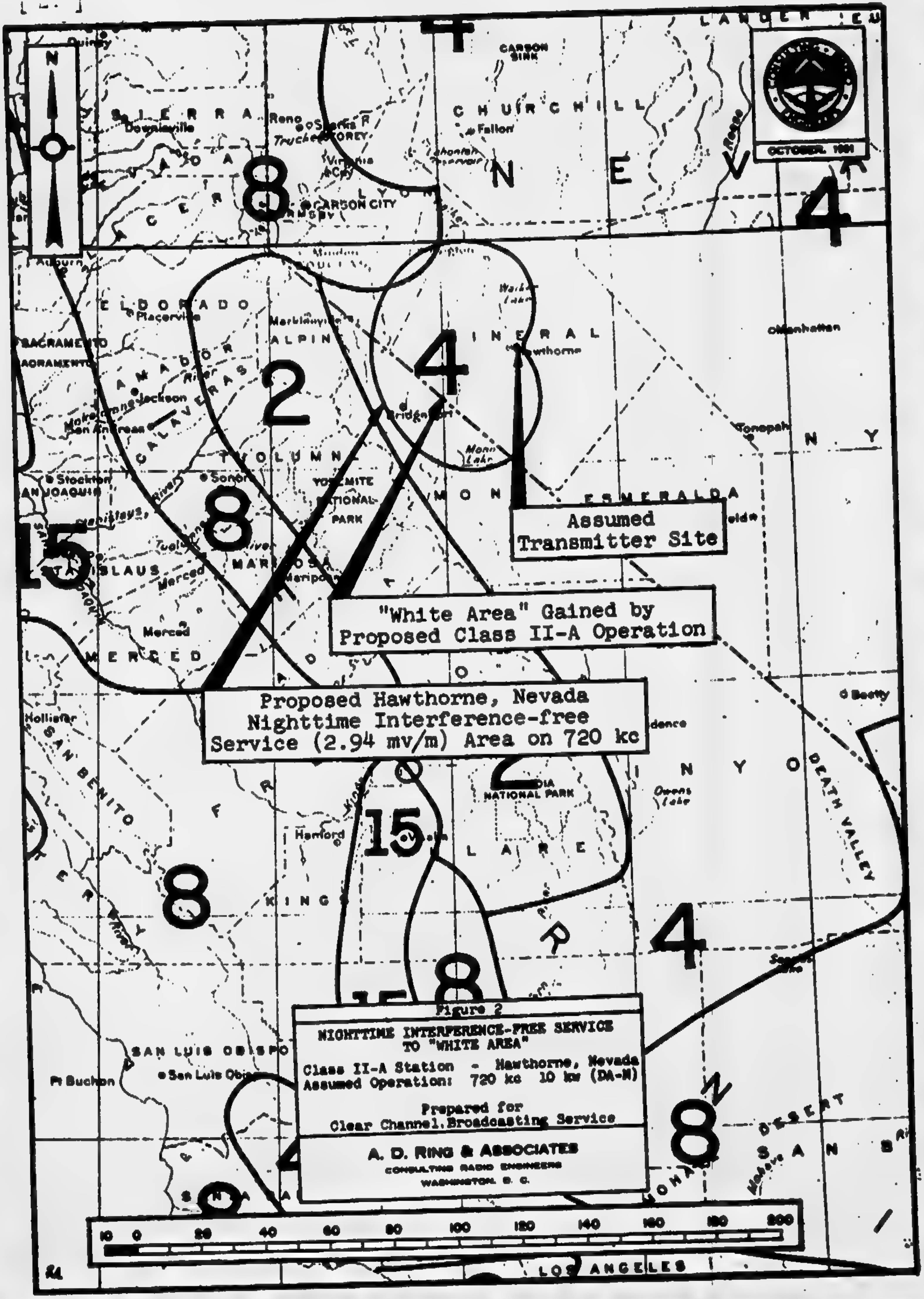
Figure 1

NIGHTTIME INTERFERENCE-FREE SERVICE TO "WHITE AREA"

Class II-A Station - Gooding, Idaho
Assumed Operation: 670 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.


N
OCTOBER, 1951
Quincy
SIERRA
Downieville
Reno
Sparks
Truckee
STOREY
Virginia City
CARSON CITY
ORMSBY
LYON
CARSON SINK
CHURCHILL
Fallon
NEV
LANDER
Reese
8
4
Auburn
ELDORADO
Placerville
SACRAMENTO
AMADOR
Jackson
CALAVERAS
San Andreas
ALPINE
Markleeville
MINERAL
Walker Lake
Hawthorne
2
4
Bridgeport
Mono Lake
TUOLUMNE
Sonora
Stockton
SAN JOAQUIN
YOSEMITE NATIONAL PARK
MONO
ESMERALDA
Manhattan
Tonopah
NY
8
15
STANISLAUS
Merced
MARIPOSA
Mariposa
MERCED
Hollister
SAN BENITO
FRESNO
SEQUOIA NATIONAL PARK
2
INYO
Owens Lake
DEATH VALLEY
Beatty
Hanford
15
Visalia
TULARE
KINGS
8
4
8
SAN LUIS OBISPO
Pt Buchon
San Luis Obispo
8
MOHAVE DESERT
SAN BERNARDINO
LOS ANGELES
10 0 20 40 60 80 100 120 140 160 180 200

Assumed Transmitter Site

"White Area" Gained by Proposed Class II-A Operation

Proposed Hawthorne, Nevada Nighttime Interference-free Service (2.94 mv/m) Area on 720 kc

Figure 2

NIGHTTIME INTERFERENCE-FREE SERVICE TO "WHITE AREA"

Class II-A Station - Hawthorne, Nevada
Assumed Operation: 720 kc 10 kw (DA-N)

Prepared for
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CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

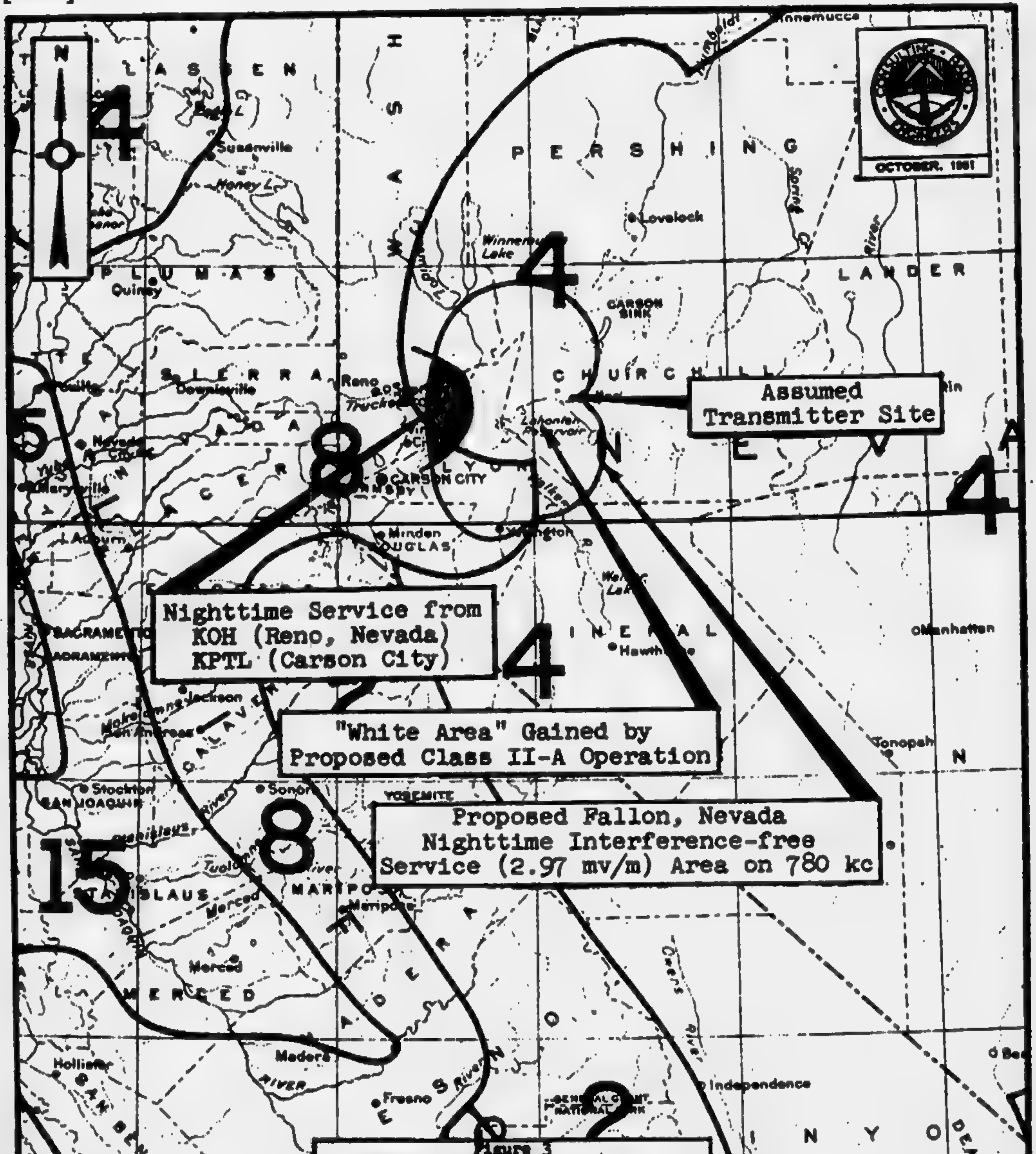

OCTOBER, 1961
Assumed Transmitter Site
Nighttime Service from KOH (Reno, Nevada) KPTL (Carson City)
"White Area" Gained by Proposed Class II-A Operation
Proposed Fallon, Nevada Nighttime Interference-free Service (2.97 mv/m) Area on 780 kc
N
4
4
4
4
4
4
5
8
8
8
15
2
LASSEN
PERSHING
WASHOE
LANDER
PLUMAS
SIERRA
CHURCHILL
NEVADA
PLACER
LYON
DOUGLAS
MINERAL
CALAVERAS
SAN JOAQUIN
STANISLAUS
MARIPOSA
MADERA
MERCED
FRESNO
SAN BENITO
INYO
DEATH VALLEY
SAN LUIS OBISPO
Winnemucca
Susanville
Lovelock
Quincy
Reno
Truckee
Downieville
Nevada City
Marysville
Auburn
Carson City
Minden
Yerington
Hawthorne
Manhattan
Tonopah
Sacramento
Jackson
San Andreas
Stockton
Sonora
Yosemite
Mariposa
Merced
Madera
Fresno
Hollister
Independence
Bakersfield
Lahontan Reservoir
Winnemucca Lake
Carson Sink
Walker Lake
Owens Lake
General Grant National Park
10 0 20 40 60 80 100 120 140 160 180 200

Figure 3

NIGHTTIME INTERFERENCE-FREE SERVICE
TO "WHITE AREA"

Class II-A Station - Fallon, Nevada
Assumed Operation: 780 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

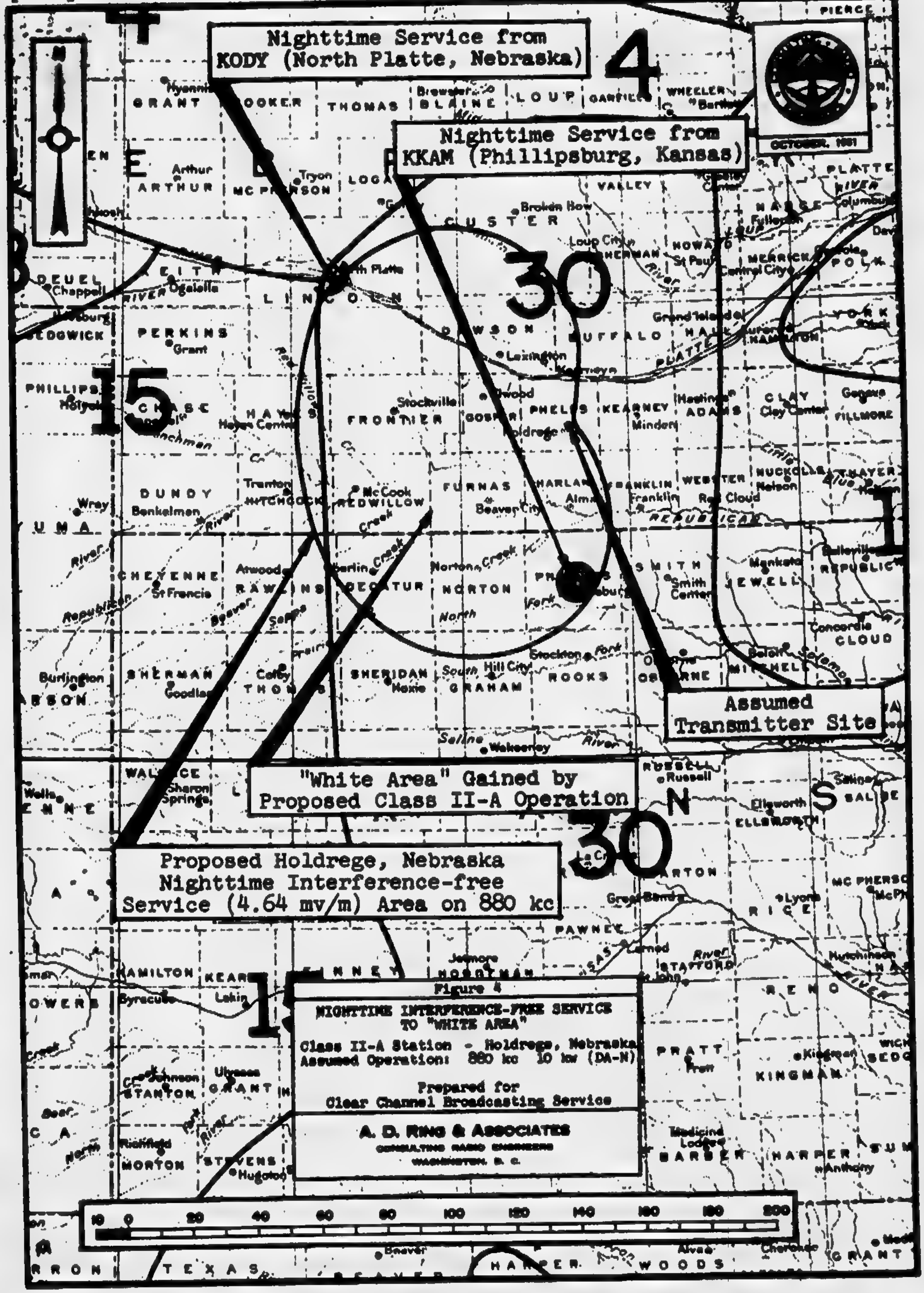

Nighttime Service from
KODY (North Platte, Nebraska)
4
Nighttime Service from
KKAM (Phillipsburg, Kansas)
OCTOBER, 1951
30
15
Assumed
Transmitter Site
"White Area" Gained by
Proposed Class II-A Operation
30
Proposed Holdrege, Nebraska
Nighttime Interference-free
Service (4.64 mv/m) Area on 880 kc
15
GRANT
HOOKER
THOMAS
BLAINE
LOUP
GARFIELD
WHEELER
PIERCE
ARTHUR
MC PHERSON
LOGAN
CUSTER
VALLEY
PLATTE
DEUEL
KEITH
LINCOLN
SHERMAN
HOWARD
MERRICK
POLK
SEDGWICK
PERKINS
DAWSON
BUFFALO
HALL
HAMILTON
YORK
PHILLIPS
CHASE
HAYES
FRONTIER
GOSPER
PHELPS
KEARNEY
ADAMS
CLAY
FILLMORE
DUNDY
HITCHCOCK
RED WILLOW
FURNAS
HARLAN
FRANKLIN
WEBSTER
NUCKOLLS
THAYER
CHEYENNE
RAWLINS
DECATUR
NORTON
PHILLIPS
SMITH
JEWELL
REPUBLIC
SHERMAN
THOMAS
SHERIDAN
GRAHAM
ROOKS
OSBORNE
MITCHELL
CLOUD
WALLACE
RUSSELL
ELLSWORTH
SALINE
BARTON
RICE
MC PHERSON
PAWNEE
STAFFORD
RENO
HAMILTON
KEARNY
FINNEY
HODGEMAN
PRATT
KINGMAN
STANTON
GRANT
MORTON
STEVENS
BARBER
HARPER
TEXAS
BEAVER
HARPER
WOODS
GRANT
North Platte
Ogallala
Broken Bow
Grand Island
Kearney
Lexington
Holdrege
McCook
Hastings
Phillipsburg
Norton
Hill City
Stockton
Russell
Great Bend
Garden City
10 0 20 40 60 80 100 120 140 160 180 200

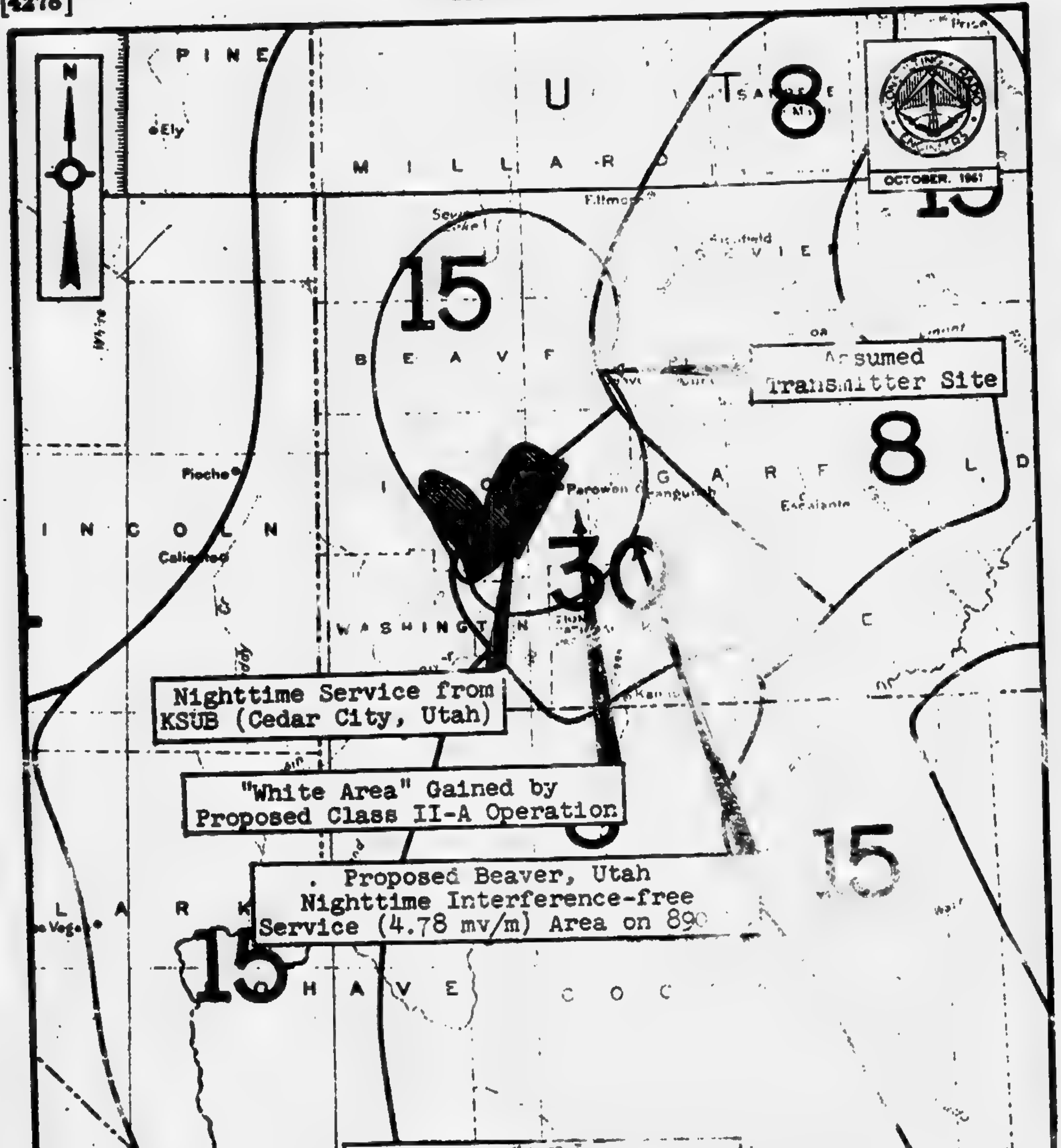
Figure 4

NIGHTTIME INTERFERENCE-FREE SERVICE
TO "WHITE AREA"

Class II-A Station - Holdrege, Nebraska
Assumed Operation: 880 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.


N
PINE
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MILLARD
Fillmore
Sevier Lake
Richfield
SEVIER
15
BEAVER
8
IRON
Parowan
GARFIELD
Escalante
Pioche
LINCOLN
Caliente
30
WASHINGTON
15
CLARK
Las Vegas
15
MOHAVE
COCONINO
Needles
ARIZONA
10 0 20 40 60 80 100 120 140 160 180 200
OCTOBER, 1961

Assumed Transmitter Site

Nighttime Service from KSUB (Cedar City, Utah)

"White Area" Gained by Proposed Class II-A Operation

Proposed Beaver, Utah Nighttime Interference-free Service (4.78 mv/m) Area on 89

NIGHTTIME INTERFERENCE-FREE SERVICE
TO "WHITE AREA"

Class II-A Station - Beaver, Utah
Assumed Operation: 890 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

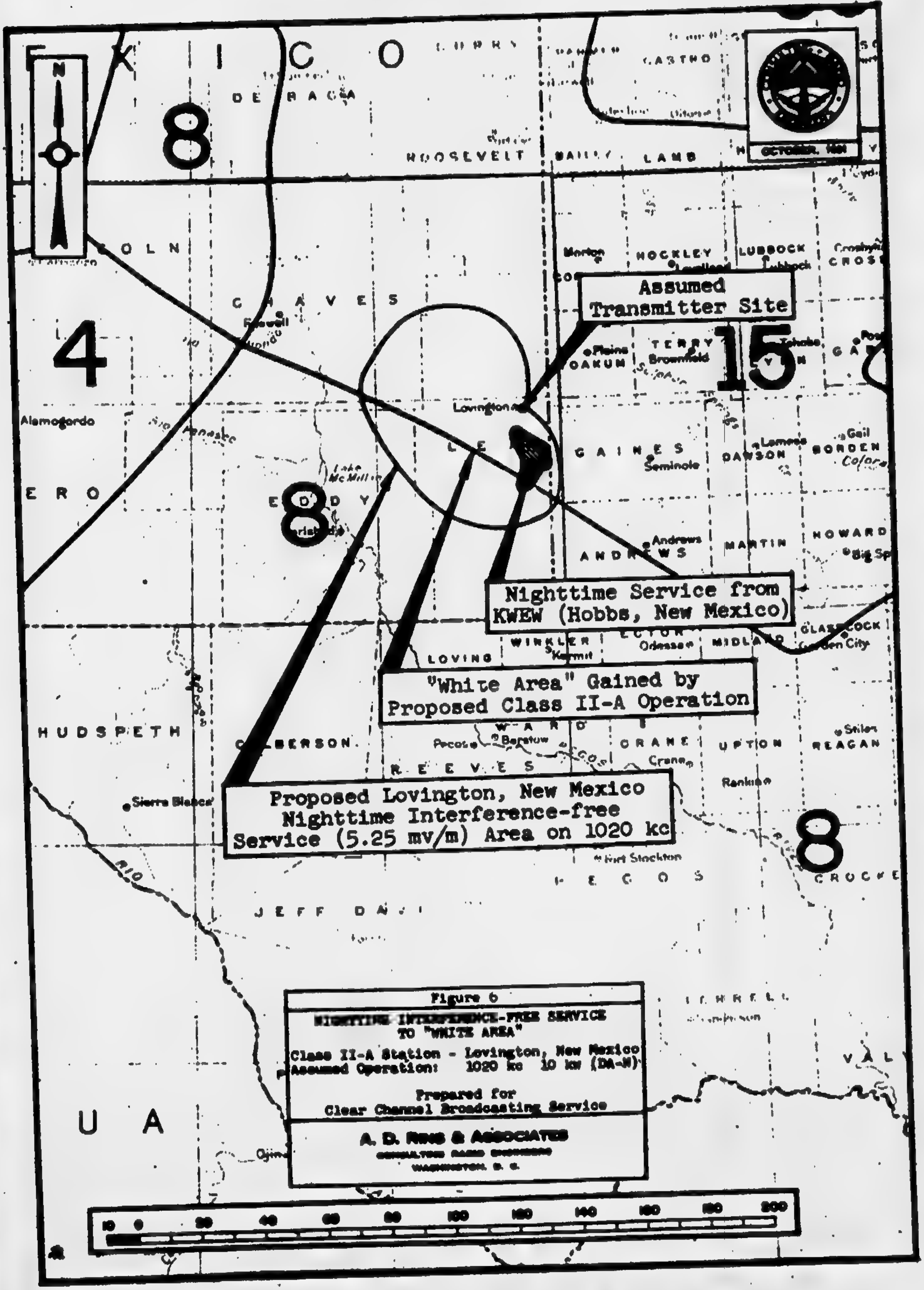

N
MEXICO
CURRY
CASTRO
DE BACA
ROOSEVELT
BAILEY
LAMB
OCTOBER, 1951
8
4
15
8
8
LINCOLN
CHAVES
Roswell
Alamogordo
OTERO
EDDY
Lake McMillan
Carlsbad
LEA
Lovington
Morton
HOCKLEY
LUBBOCK
Lubbock
CROSBY
Plains
YOAKUM
TERRY
Brownfield
LYNN
Tahoka
GARZA
GAINES
Seminole
DAWSON
Lamesa
BORDEN
Gail
ANDREWS
Andrews
MARTIN
HOWARD
Big Spring
LOVING
WINKLER
Kermit
ECTOR
Odessa
MIDLAND
GLASSCOCK
Garden City
HUDSPETH
CULBERSON
WARD
Pecos
Barstow
CRANE
Crane
UPTON
Rankin
REAGAN
Stiles
REEVES
Sierra Blanca
Fort Stockton
PECOS
CROCKETT
JEFF DAVIS
TERRELL
VAL VERDE
RIO
U A
Assumed Transmitter Site
Nighttime Service from KWEW (Hobbs, New Mexico)
"White Area" Gained by Proposed Class II-A Operation
Proposed Lovington, New Mexico Nighttime Interference-free Service (5.25 mv/m) Area on 1020 kc
10 0 20 40 60 80 100 120 140 160 180 200

Figure 6

NIGHTTIME INTERFERENCE-FREE SERVICE
TO "WHITE AREA"

Class II-A Station - Lovington, New Mexico
Assumed Operation: 1020 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

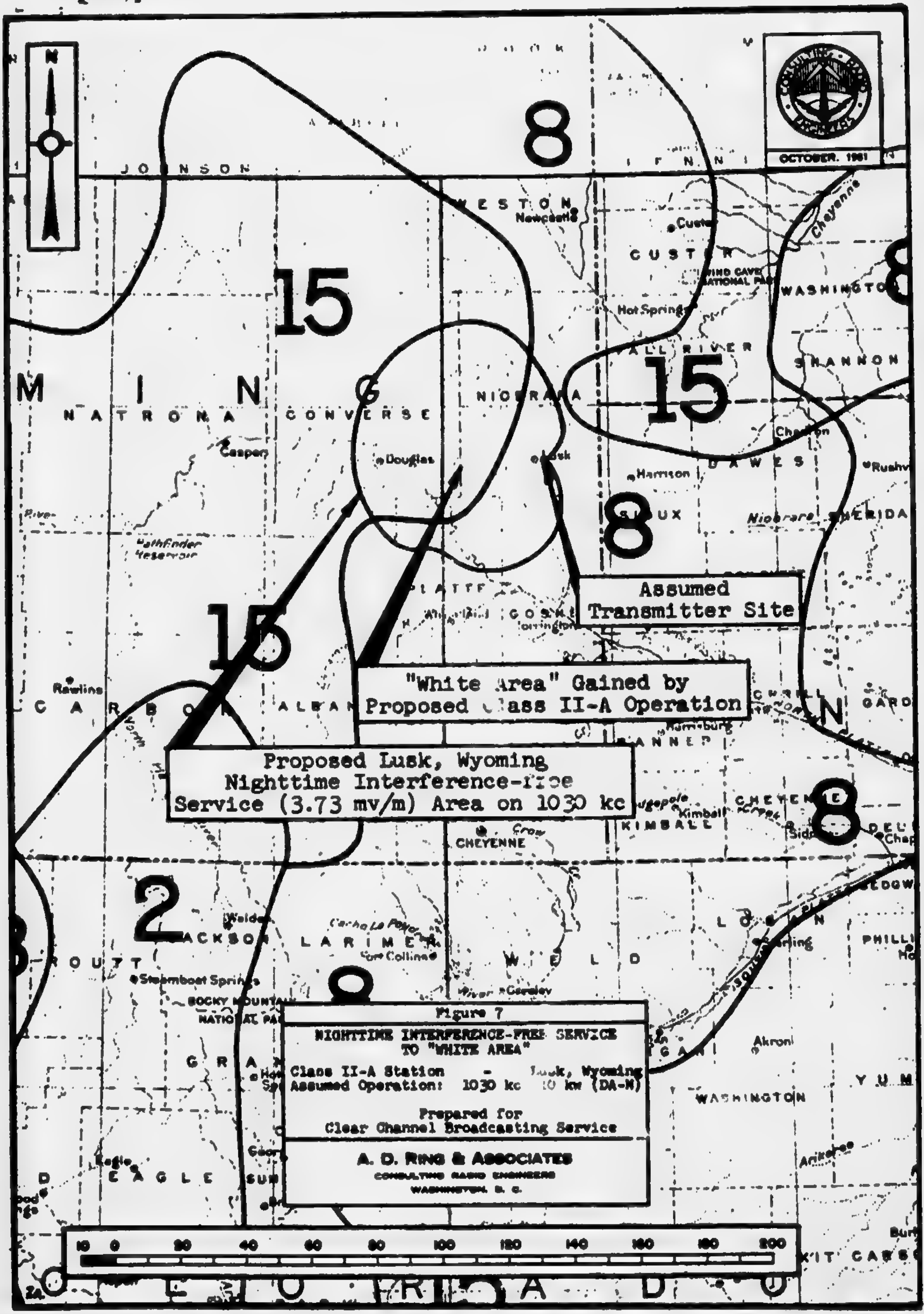


Figure 7

NIGHTTIME INTERFERENCE-FREE SERVICE
TO "WHITE AREA"

Class II-A Station - Lusk, Wyoming
Assumed Operation: 1030 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

OCTOBER, 1961
N
8
15
15
15
8
8
8
2
8
Assumed Transmitter Site
"White Area" Gained by Proposed Class II-A Operation
Proposed Lusk, Wyoming Nighttime Interference-Free Service (3.73 mv/m) Area on 1030 kc
JOHNSON
WESTON
Newcastle
Custer
CUSTER
Wind Cave National Park
Hot Springs
FALL RIVER
WASHINGTON
SHANNON
Cheyenne
NATRONA
CONVERSE
NIOBRARA
Casper
Douglas
Lusk
Harrison
DAWES
Chadron
Rushville
SIOUX
Niobrara
SHERIDAN
Pathfinder Reservoir
PLATTE
GOSHEN
Torrington
Rawlins
CARBON
ALBANY
Harrisburg
BANNER
CHEYENNE
KIMBALL
Kimball
Sidney
CHEYENNE
DEUEL
Chappell
SEDGWICK
LOGAN
Sterling
PHILLIPS
JACKSON
Walden
LARIMER
Fort Collins
WELD
Greeley
ROUTT
Steamboat Springs
ROCKY MOUNTAIN NATIONAL PARK
GRAND
Akron
WASHINGTON
YUMA
EAGLE
Eagle
KIT CARSON
COLORADO
10 0 20 40 60 80 100 120 140 160 180 200

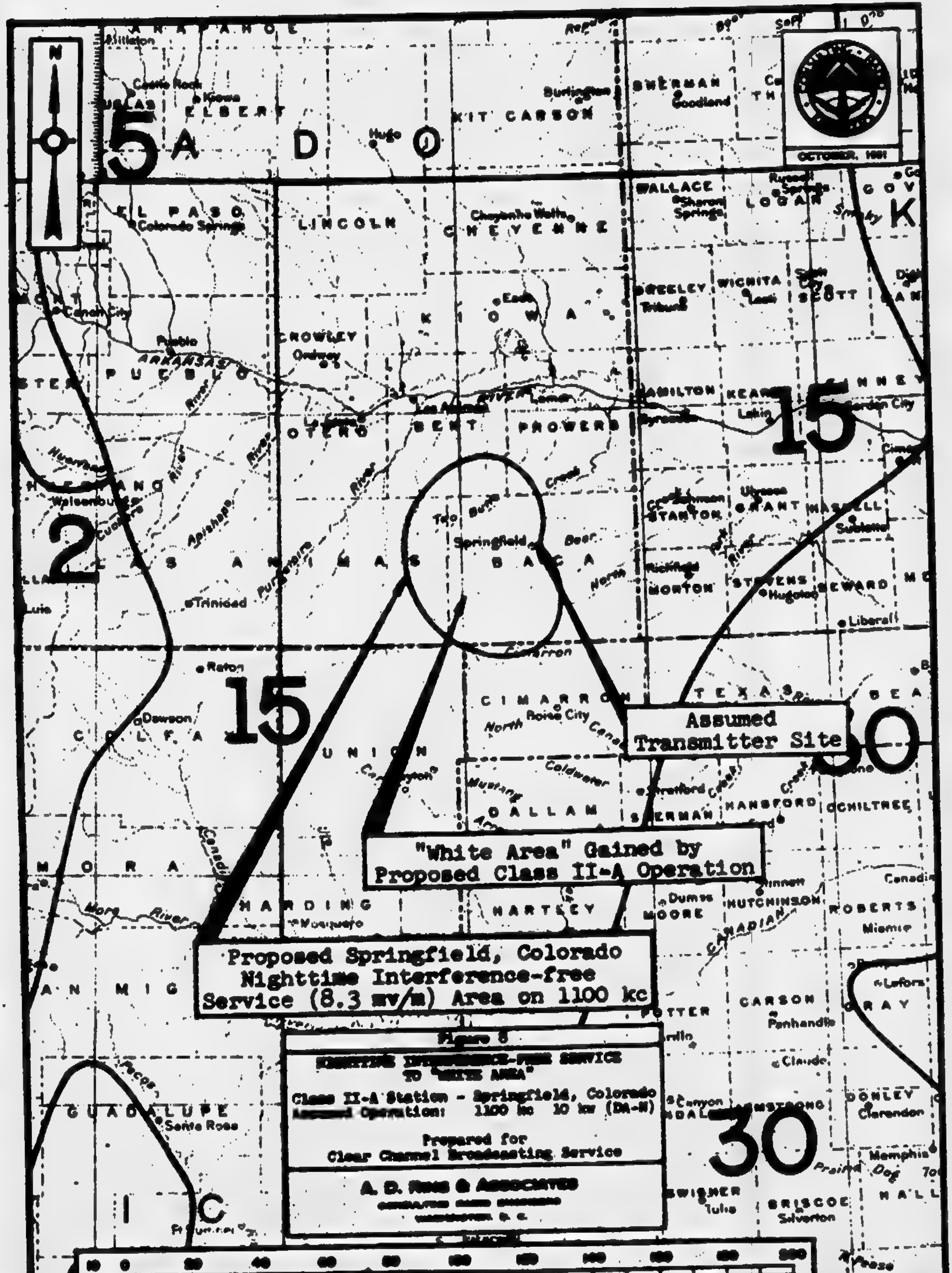

Assumed Transmitter Site
"White Area" Gained by Proposed Class II-A Operation
Proposed Springfield, Colorado Nighttime Interference-free Service (8.3 mv/m) Area on 1100 kc
Springfield
Two Buttes
BACA
LAS ANIMAS
PROWERS
BENT
OTERO
KIOWA
CHEYENNE
LINCOLN
ELBERT
KIT CARSON
EL PASO
PUEBLO
CROWLEY
HUERFANO
COLFAX
UNION
CIMARRON
TEXAS
DALLAM
HARTLEY
HARDING
MORA
SHERMAN
HANSFORD
OCHILTREE
MOORE
HUTCHINSON
ROBERTS
POTTER
CARSON
GRAY
DONLEY
SWISHER
BRISCOE
HALL
ROOSEVELT
GUADALUPE
MORTON
STEVENS
SEWARD
STANTON
GRANT
HASKELL
HAMILTON
KEARNY
GREELEY
WICHITA
SCOTT
WALLACE
LOGAN
SHERMAN
Colorado Springs
Pueblo
Canon City
Trinidad
Walsenburg
Raton
Dawson
Las Animas
Lamar
Boise City
Dalhart
Stratford
Liberal
Garden City
Syracuse
Lakin
Goodland
Burlington
Hugo
Kiowa
Castle Rock
Littleton
Eads
Ordway
Santa Rosa
Panhandle
Claude
Clarendon
Memphis
Tulia
Silverton
Miami
Lefors
Mosquero
Hugoton
Richfield
Ulysses
Johnson
Sublette
Tribune
Leoti
Sharon Springs
Cheyenne Wells
Arkansas River
Purgatoire River
Apishapa River
Cucharas River
Mora River
Canadian
Cimarron
North Canadian
Coldwater
Mustang
Carrizo
Bear Creek
Prairie Dog Town
Pecos
5
A D O
K
2
15
15
30
30
I C
N
OCTOBER, 1951

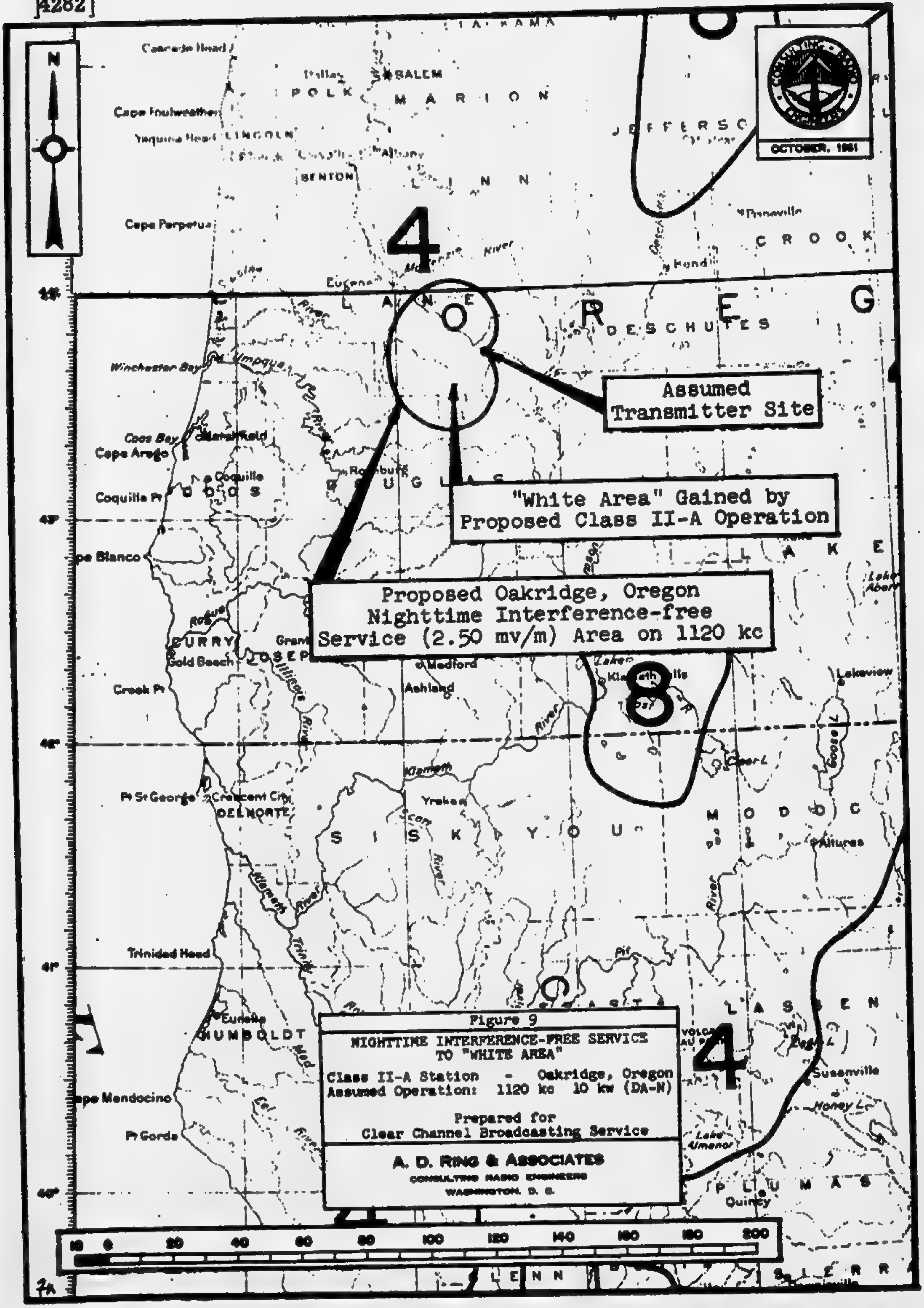
Figure 8

NIGHTTIME INTERFERENCE-FREE SERVICE
TO "WHITE AREA"

Class II-A Station - Springfield, Colorado
[redacted]tion: 1100 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. Ring & Associates



N
OCTOBER, 1961
SALEM
Dallas
POLK
MARION
LINCOLN
Albany
BENTON
LINN
JEFFERSON
Prineville
CROOK
Cascade Head
Cape Foulweather
Yaquina Head
Cape Perpetua
Eugene
Mackenzie River
Bend
LANE
OREGON
DESCHUTES
Winchester Bay
Umpqua
Coos Bay
Marshfield
Cape Arago
Coquille
Roseburg
COOS
DOUGLAS
Coquille Pt
Cape Blanco
LAKE
Lake Abert
Rogue
CURRY
Gold Beach
JOSEPHINE
Medford
Ashland
Klamath Falls
Lakeview
Crook Pt
Goose L
Pt St George
Crescent City
DEL NORTE
Klamath
Yreka
Scott River
SISKIYOU
MODOC
Alturas
Trinidad Head
Eureka
HUMBOLDT
LASSEN
Susanville
Honey L
Cape Mendocino
Pt Gorda
Lake Almanor
PLUMAS
Quincy
GLENN
SIERRA
4
8
4
10 0 20 40 60 80 100 120 140 160 180 200
44°
43°
42°
41°
40°

Assumed Transmitter Site

"White Area" Gained by Proposed Class II-A Operation

Proposed Oakridge, Oregon Nighttime Interference-free Service (2.50 mv/m) Area on 1120 kc

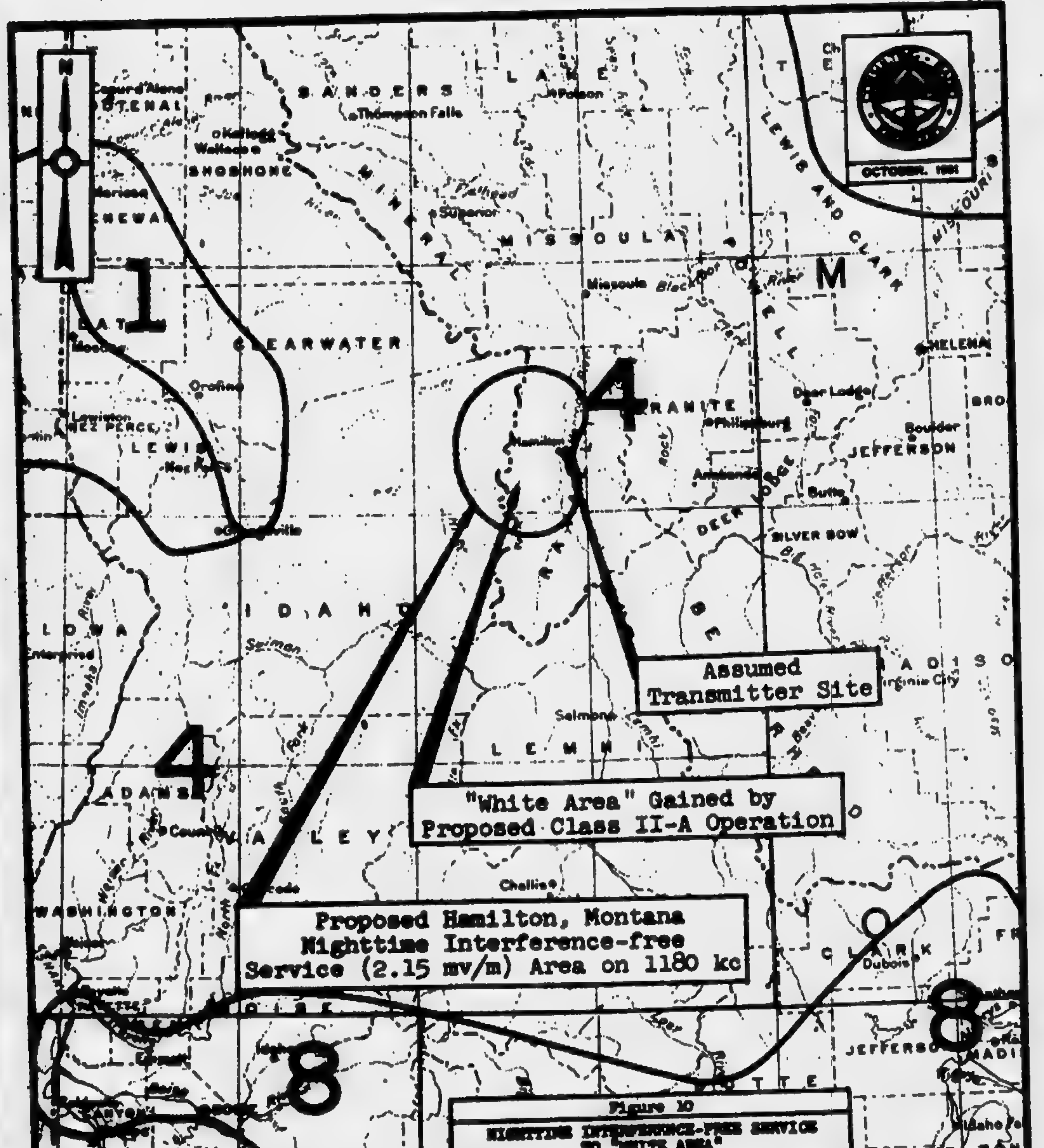
Figure 9

NIGHTTIME INTERFERENCE-FREE SERVICE TO "WHITE AREA"

Class II-A Station - Oakridge, Oregon
Assumed Operation: 1120 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.


N
1
4
4
8
8
M
KOOTENAI
SHOSHONE
BENEWAH
LATAH
CLEARWATER
NEZ PERCE
LEWIS
IDAHO
LEWIS
IDAHO
ADAMS
VALLEY
WASHINGTON
BOISE
CANYON
ADA
ELMORE
CAMAS
JEROME
POWER
CASSIA
LEMHI
CUSTER
BUTTE
CLARK
JEFFERSON
MADISON
BINGHAM
BANNOCK
FREMONT
SANDERS
LAKE
MINERAL
MISSOULA
RAVALLI
GRANITE
POWELL
LEWIS AND CLARK
DEER LODGE
SILVER BOW
BEAVERHEAD
JEFFERSON
BROADWATER
MADISON
Coeur d'Alene
Thompson Falls
Polson
Kellogg
Wallace
Superior
Missoula
Helena
Moscow
Orofino
Lewiston
Nez Perce
Grangeville
Hamilton
Philipsburg
Deer Lodge
Anaconda
Boulder
Butte
Virginia City
Salmon
Challis
Council
Cascade
Weiser
Emmett
Boise
Caldwell
Mountain Home
Silver City
Dubois
Idaho Falls
Blackfoot
Pocatello
American Falls
Rigby
Gooding
Missouri
Blackfoot River
Flathead
Salmon
Snake
Clark Fork
Big Hole
OCTOBER, 1951
0
20
40
60
80
100
120
140
160
180
200

Assumed Transmitter Site

"White Area" Gained by Proposed Class II-A Operation

Proposed Hamilton, Montana Nighttime Interference-free Service (2.15 mv/m) Area on 1180 kc

Figure 10

NIGHTTIME INTERFERENCE-FREE SERVICE TO "WHITE AREA"

Class II-A Station - Hamilton, Montana
Assumed Operation: 1180 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

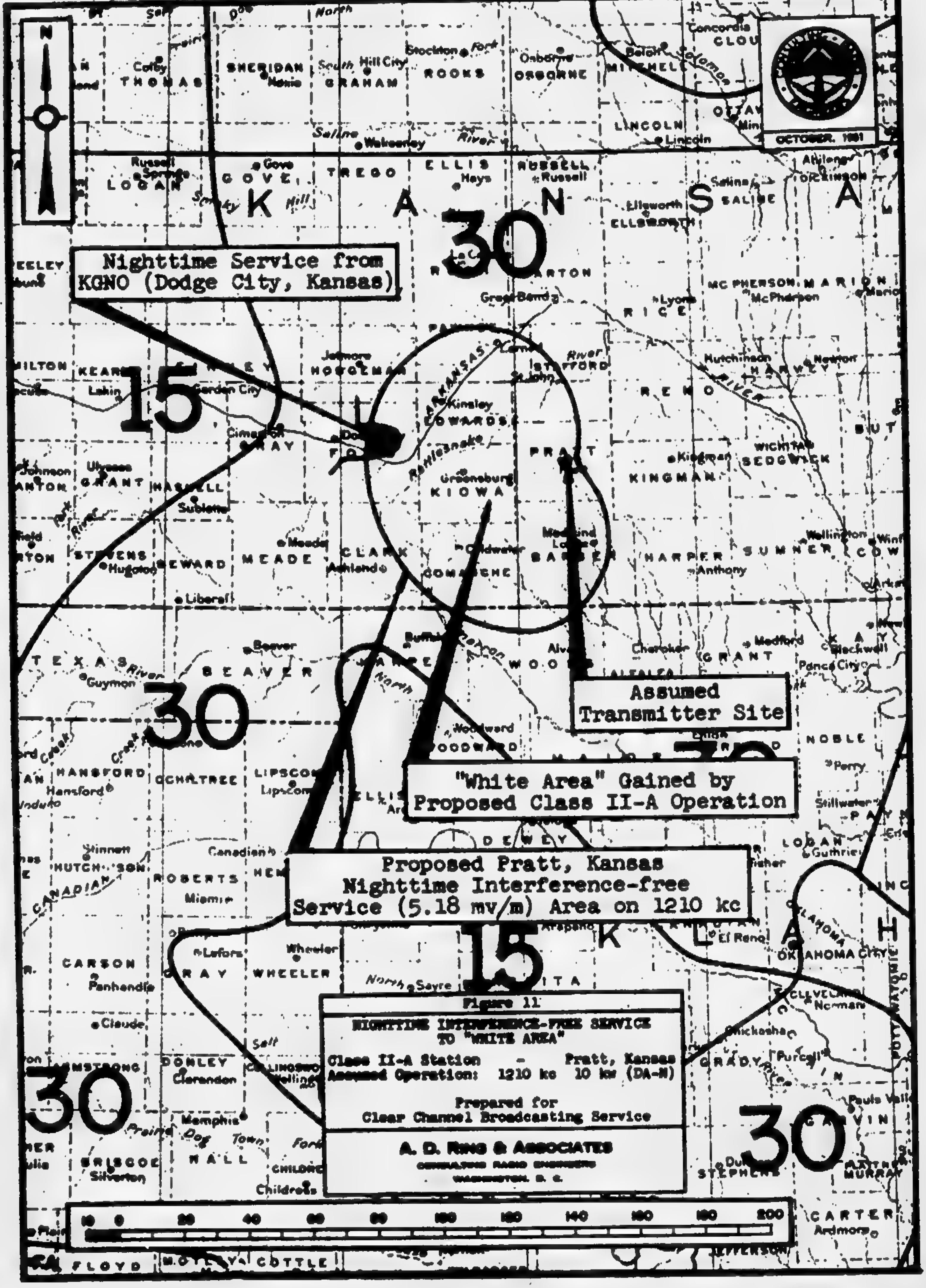

Nighttime Service from KGNO (Dodge City, Kansas)
Assumed Transmitter Site
"White Area" Gained by Proposed Class II-A Operation
Proposed Pratt, Kansas Nighttime Interference-free Service (5.18 mv/m) Area on 1210 kc
30
15
30
30
15
30
30
K A N S A S
O K L A H
N
OCTOBER, 1951
10 0 20 40 60 80 100 120 140 160 180 200

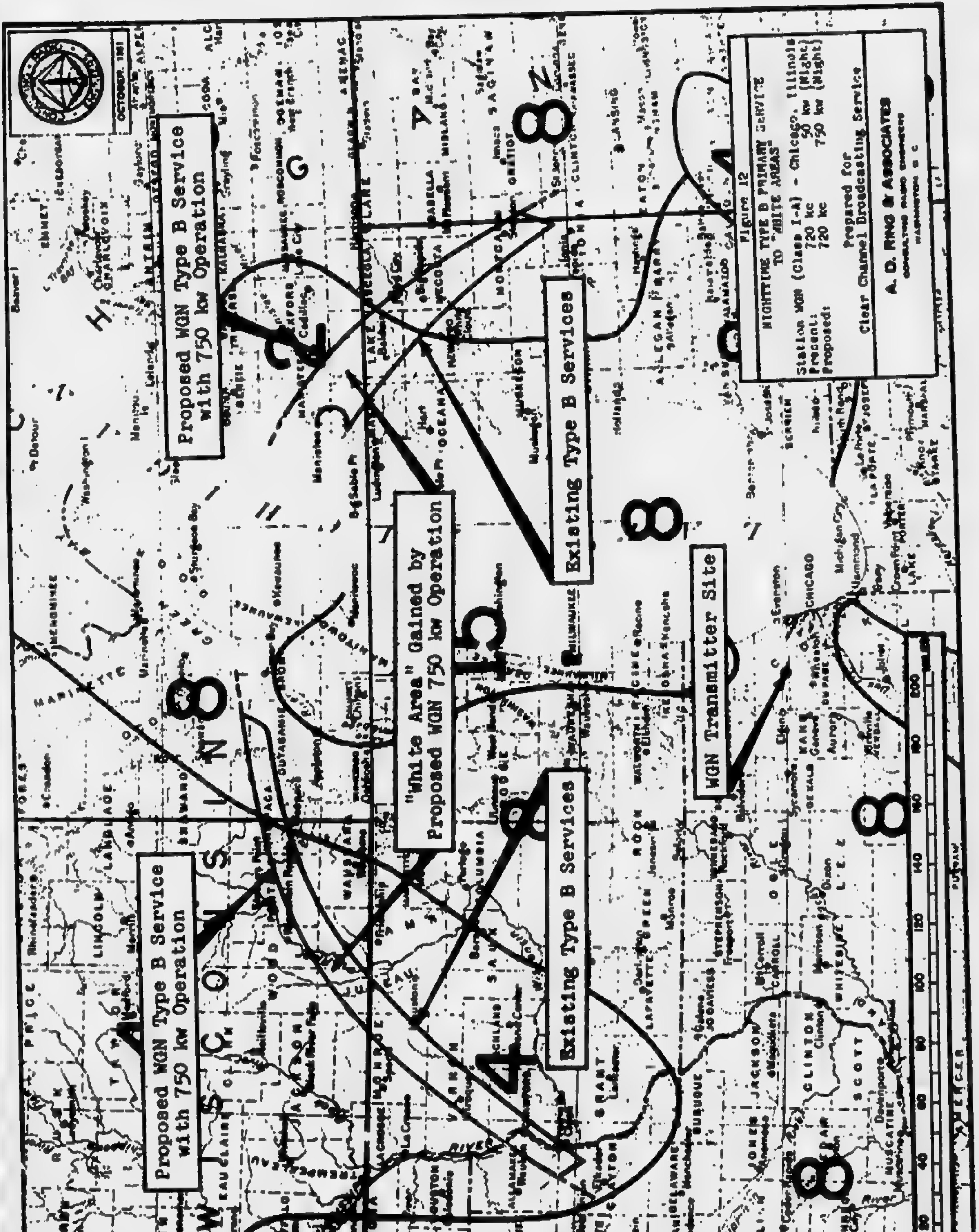
Figure 11

NIGHTTIME INTERFERENCE-FREE SERVICE
TO "WHITE AREA"

Class II-A Station - Pratt, Kansas
Assumed Operation: 1210 kc 10 kw (DA-N)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.



Proposed WGN Type B Service with 750 kw Operation
Existing Type B Services
"White Area" Gained by Proposed WGN 750 kw Operation
Existing Type B Services
WGN Transmitter Site
Proposed WGN Type B Service with 750 kw Operation
CHICAGO
MILWAUKEE
WISCONSIN
OCTOBER 1951

Figure 12

NIGHTTIME TYPE B PRIMARY SERVICE TO "WHITE AREAS"

Station WGN (Class I-A) - Chicago, Illinois
Present: 720 kc 50 kw (Night)
Proposed: 720 kc 750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON D C

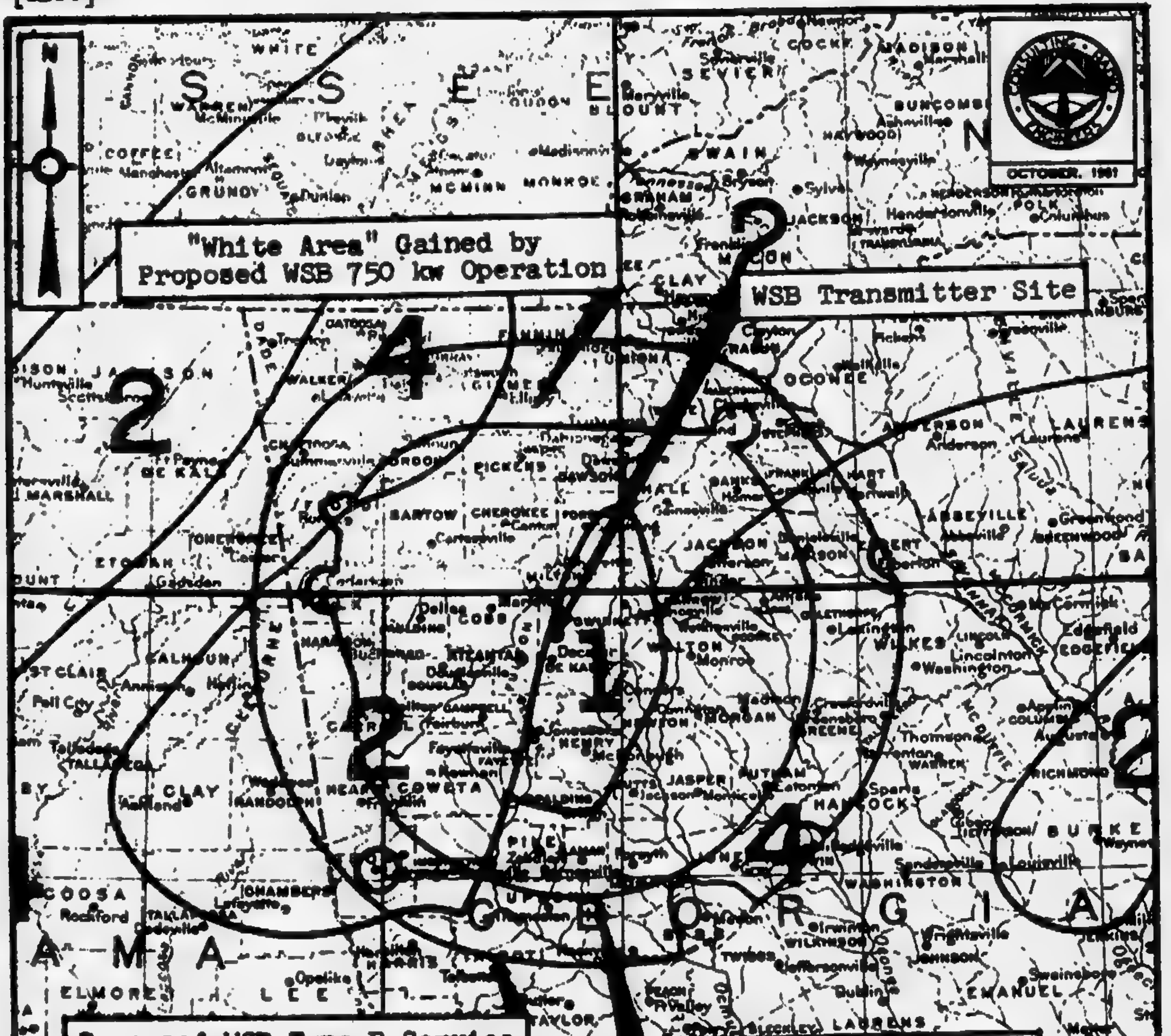

"White Area" Gained by Proposed WSB 750 kw Operation
WSB Transmitter Site
Proposed WSB Type B Service with 750 kw Operation
Existing Type B Services
OCTOBER, 1961
1
2
3
4
GEORGIA
ALABAMA
TENNESSEE
MILES

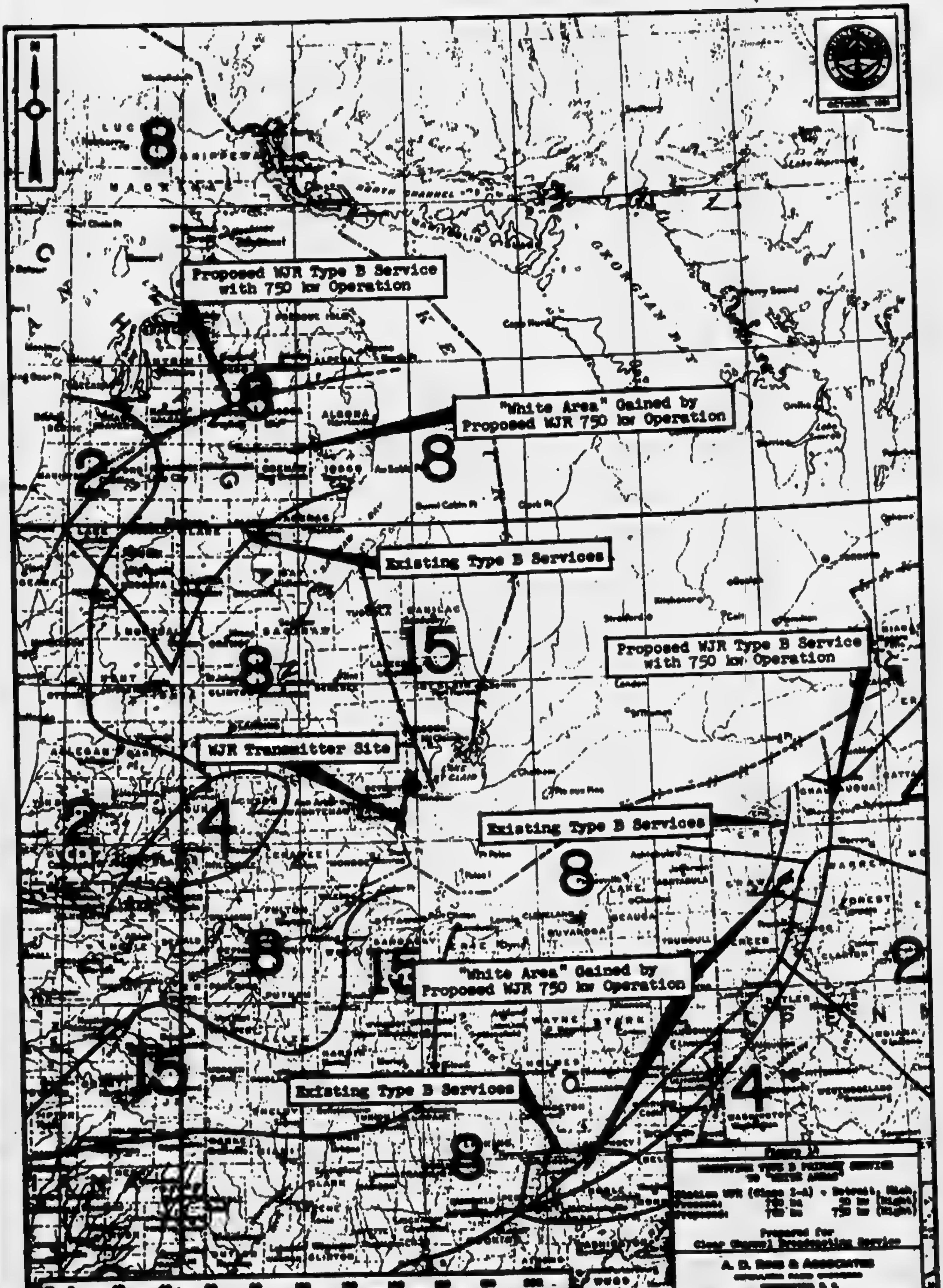
Figure 13

NIGHTTIME TYPE B PRIMARY SERVICE
TO "WHITE AREAS"

Station WSB (Class I-A) - Atlanta, Ga.
Present: 750 kc 50 kw (Night)
Proposed: 750 kc 750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.


Proposed WJR Type B Service with 750 kw Operation
"White Area" Gained by Proposed WJR 750 kw Operation
Existing Type B Services
Proposed WJR Type B Service with 750 kw Operation
WJR Transmitter Site
Existing Type B Services
"White Area" Gained by Proposed WJR 750 kw Operation
Existing Type B Services
GEORGIAN BAY
8
8
2
8
15
8
2
4
8
8
15
2
15
4
8
Prepared for
Clear Channel Broadcasting Service
A. D. Ring & Associates

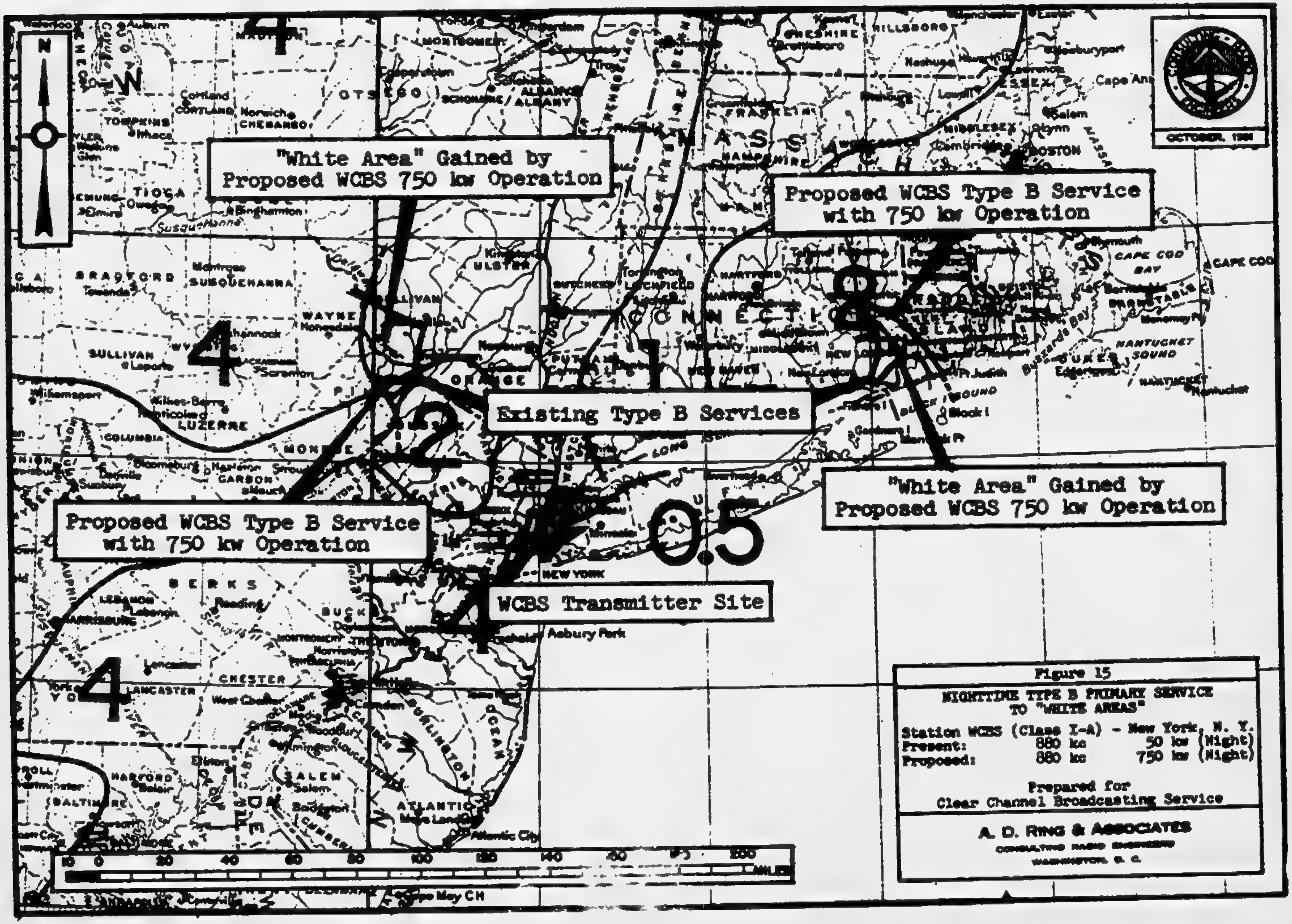

"White Area" Gained by Proposed WCBS 750 kw Operation
Proposed WCBS Type B Service with 750 kw Operation
Existing Type B Services
"White Area" Gained by Proposed WCBS 750 kw Operation
Proposed WCBS Type B Service with 750 kw Operation
WCBS Transmitter Site
0.5
1
2
4
8
N
OCTOBER, 1961
NEW YORK
Asbury Park
Atlantic City
BOSTON
Cape Ann
CAPE COD BAY
NANTUCKET SOUND
CONNECTICUT
MASS
MILES

Figure 15

NIGHTTIME TYPE B PRIMARY SERVICE
TO "WHITE AREAS"

Station WCBS (Class I-A) - New York, N. Y.
Present: 880 kc 50 kw (Night)
Proposed: 880 kc 750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

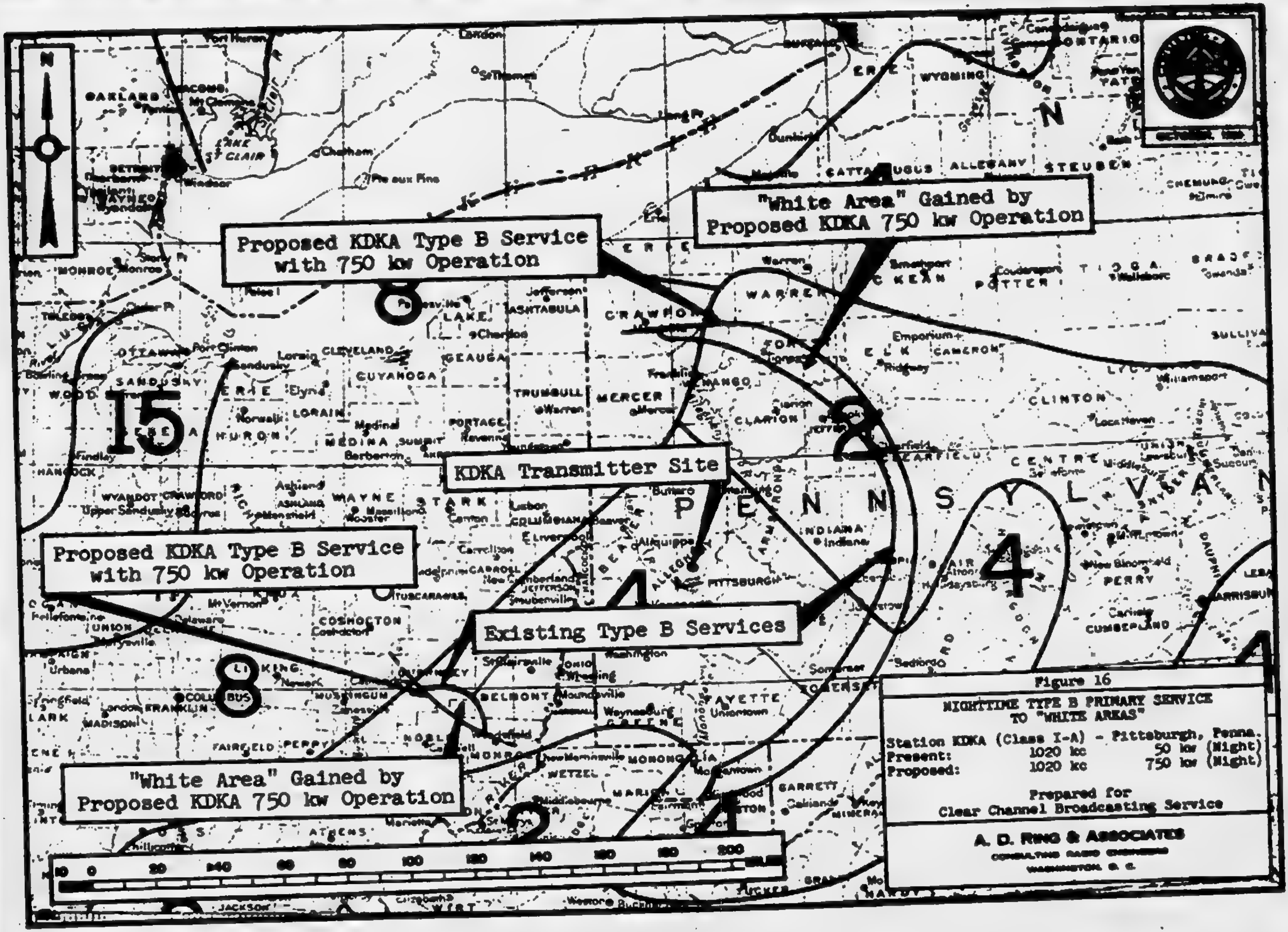

Proposed KDKA Type B Service with 750 kw Operation
"White Area" Gained by Proposed KDKA 750 kw Operation
KDKA Transmitter Site
Proposed KDKA Type B Service with 750 kw Operation
Existing Type B Services
"White Area" Gained by Proposed KDKA 750 kw Operation
15
8
2
4
8
2
PENNSYLVANIA
PITTSBURGH
CLEVELAND
COLUMBUS
ONTARIO
ERIE
0 20 40 60 80 100 120 140 160 180 200

Figure 16

NIGHTTIME TYPE B PRIMARY SERVICE TO "WHITE AREAS"

Station KDKA (Class I-A) - Pittsburgh, Penna.
Present: 1020 kc 50 kw (Night)
Proposed: 1020 kc 750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
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WASHINGTON, D. C.

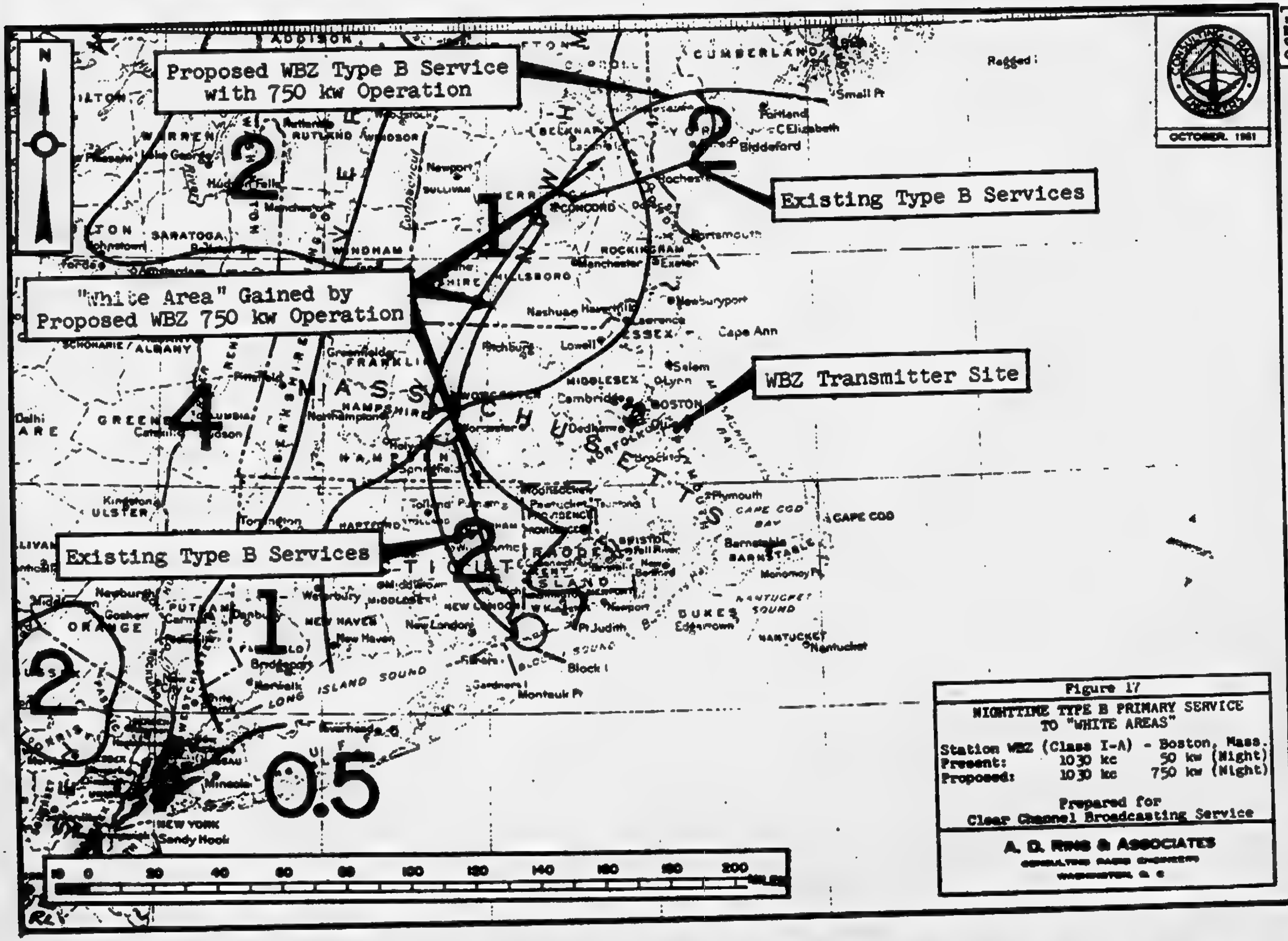

Proposed WBZ Type B Service
with 750 kw Operation
Existing Type B Services
"White Area" Gained by
Proposed WBZ 750 kw Operation
WBZ Transmitter Site
Existing Type B Services
N
OCTOBER, 1961
CONSULTING RADIO ENGINEERS
2
2
1
4
2
1
2
0.5
CONCORD
Portland
Biddeford
Portsmouth
Manchester
Nashua
Lowell
Newburyport
Cape Ann
Salem
Lynn
Cambridge
BOSTON
Worcester
Springfield
Providence
Plymouth
CAPE COD
Barnstable
Nantucket
New Haven
New London
Bridgeport
Block I
Montauk Pt
NEW YORK
Sandy Hook
LONG ISLAND SOUND
0
20
40
60
80
100
120
140
160
180
200
MILES

Figure 17

NIGHTTIME TYPE B PRIMARY SERVICE
TO "WHITE AREAS"

Station WBZ (Class I-A) - Boston, Mass.
Present: 1030 kc 50 kw (Night)
Proposed: 1030 kc 750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

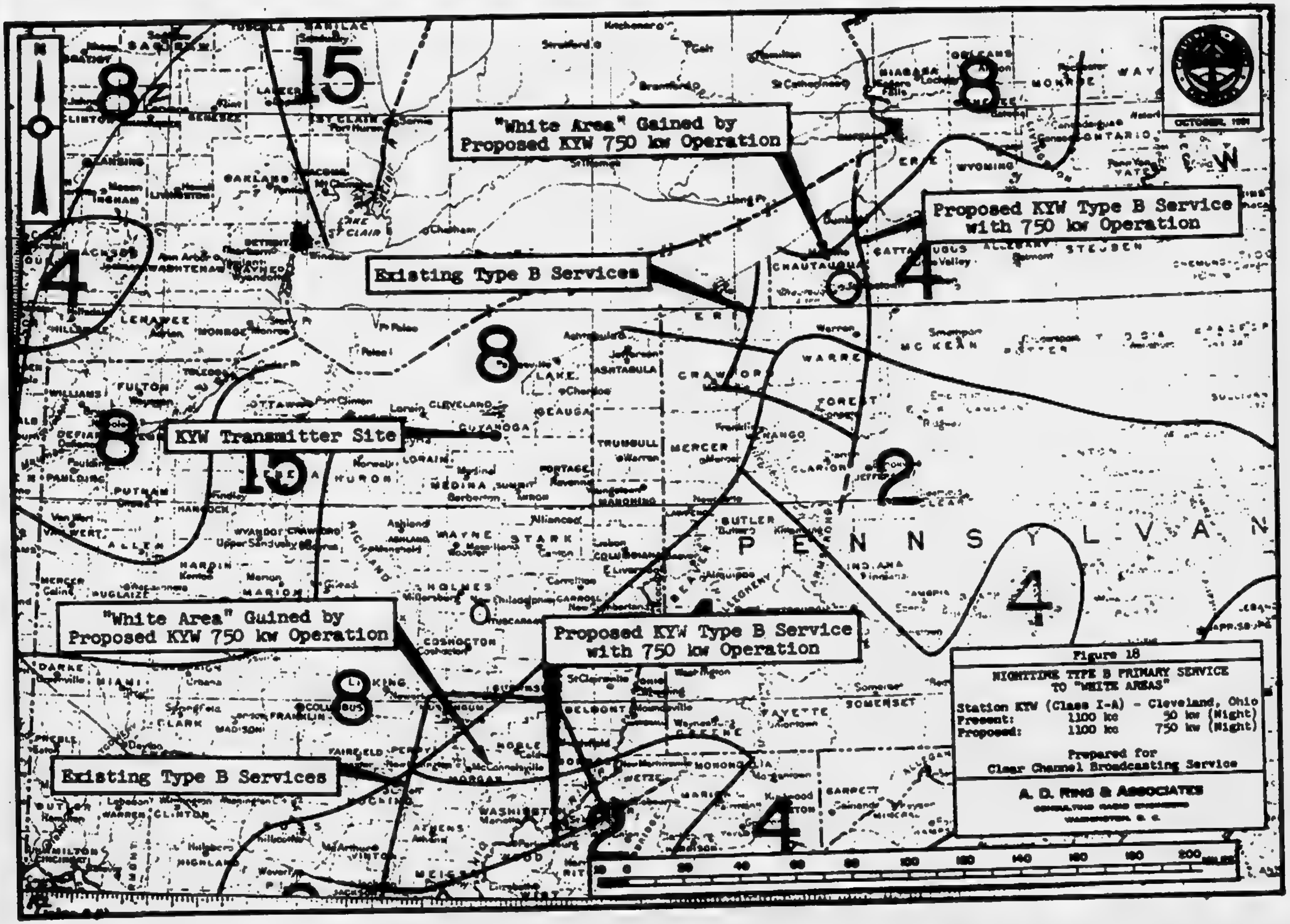

"White Area" Gained by Proposed KYW 750 kw Operation
Proposed KYW Type B Service with 750 kw Operation
Existing Type B Services
KYW Transmitter Site
"White Area" Gained by Proposed KYW 750 kw Operation
Proposed KYW Type B Service with 750 kw Operation
Existing Type B Services
8
15
8
4
4
8
8
15
2
4
8
4
PENNSYLVANIA
OCTOBER, 1951

Figure 18

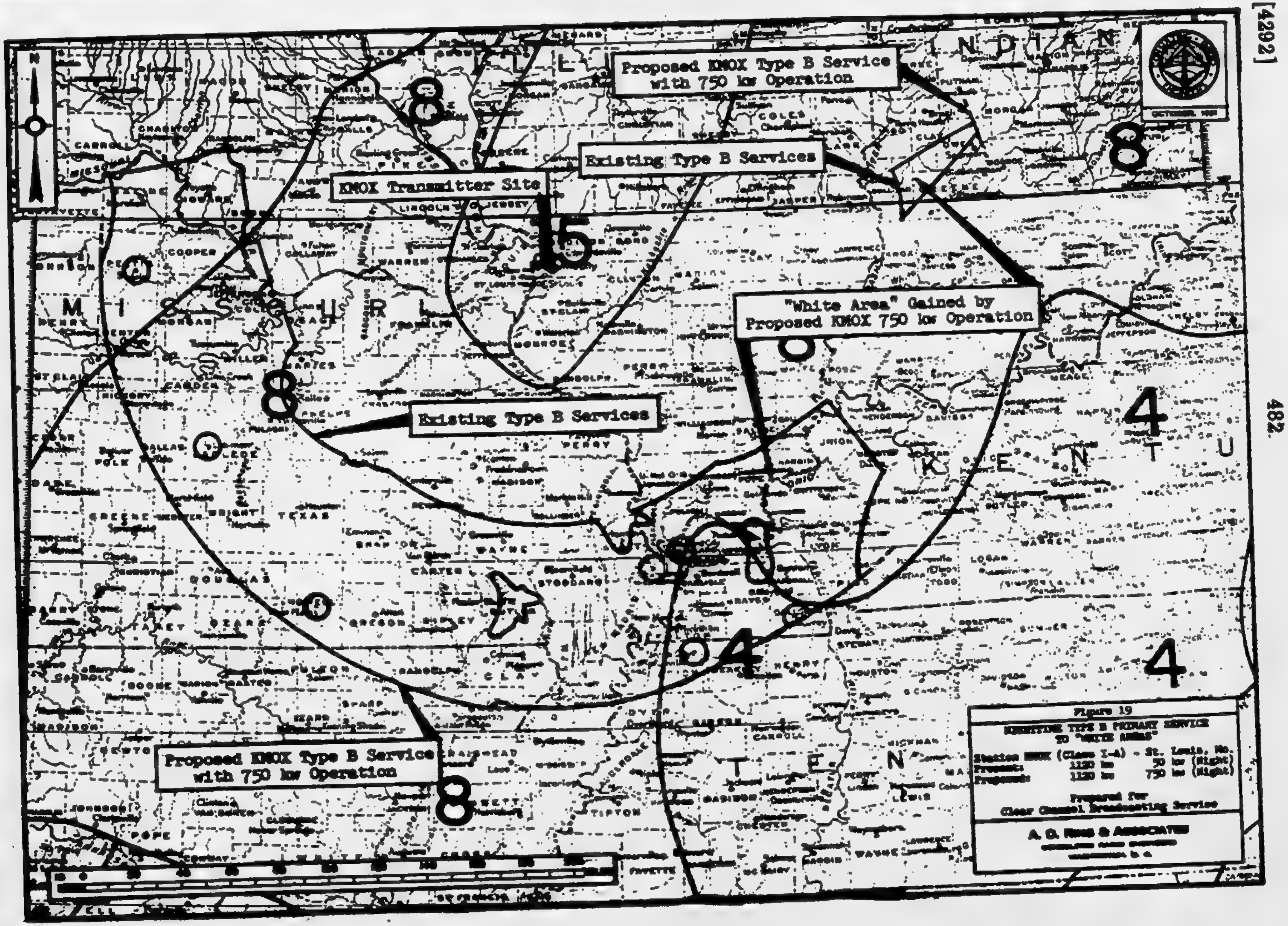
NIGHTTIME TYPE B PRIMARY SERVICE TO "WHITE AREAS"

Station KYW (Class I-A) - Cleveland, Ohio

Present:	1100 kc	50 kw (Night)
Proposed:	1100 kc	750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.



Proposed KMOX Type B Service with 750 kw Operation
Existing Type B Services
KMOX Transmitter Site
"White Area" Gained by Proposed KMOX 750 kw Operation
Existing Type B Services
Proposed KMOX Type B Service with 750 kw Operation
MISSOURI
ILLINOIS
INDIANA
KENTUCKY
TENN
8
15
8
8
4
4
4
8
OCTOBER 1947

Figure 19

NIGHTTIME TYPE B PRIMARY SERVICE TO "WHITE AREAS"

Station KMOX (Class I-A) - St. Louis, Mo.
Present: 1120 kc 50 kw (Night)
Proposed: 1120 kc 750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. Ring & Associates
[illegible]
[illegible]

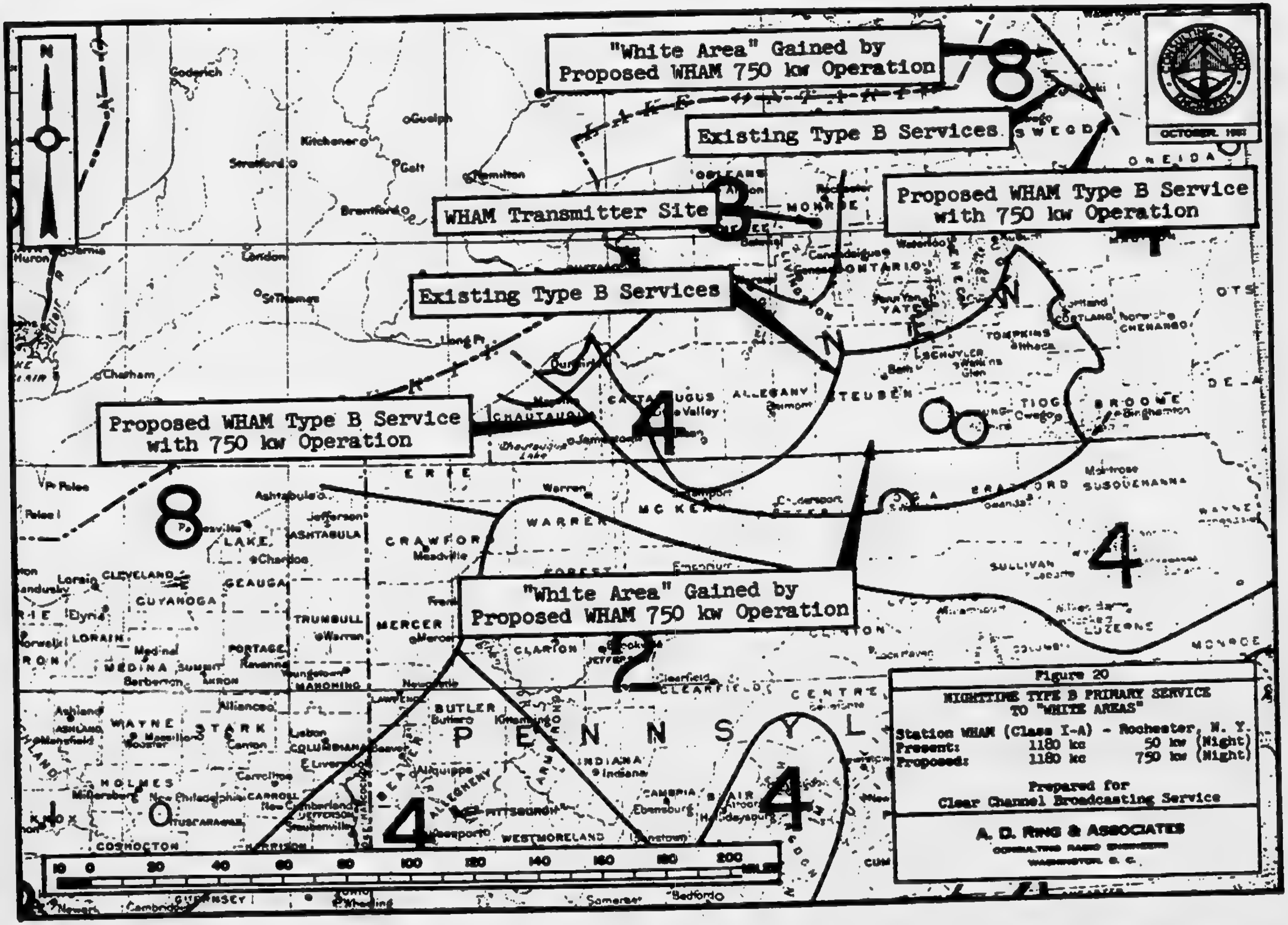

"White Area" Gained by Proposed WHAM 750 kw Operation
Existing Type B Services
Proposed WHAM Type B Service with 750 kw Operation
WHAM Transmitter Site
Existing Type B Services
Proposed WHAM Type B Service with 750 kw Operation
"White Area" Gained by Proposed WHAM 750 kw Operation
OCTOBER
8
8
8
4
4
4
4
2
Goderich
Kitchener
Guelph
Stratford
Galt
Hamilton
Brantford
London
St Thomas
Chatham
Long Pt.
Dunkirk
Jamestown
Rochester
MONROE
ONTARIO
Canandaigua
STEUBEN
ALLEGANY
CATTARAUGUS
CHAUTAUQUA
TOMPKINS
Ithaca
CORTLAND
CHENANGO
BROOME
Binghamton
TIOGA
ONEIDA
ERIE
WARREN
MC KEAN
CRAWFORD
Meadville
ASHTABULA
LAKE
CLEVELAND
CUYAHOGA
GEAUGA
TRUMBULL
MERCER
CLARION
CLEARFIELD
CENTRE
BUTLER
PENNSYL
INDIANA
CAMBRIA
BLAIR
ALLEGHENY
PITTSBURGH
WESTMORELAND
BEAVER
SULLIVAN
LUZERNE
MONROE
BRADFORD
SUSQUEHANNA
CLINTON
WAYNE
STARK
HOLMES
COSHOCTON
MAHONING
PORTAGE
MEDINA
LORAIN
Somerset
Bedford
10 0 20 40 60 80 100 120 140 160 180 200 MILES

Figure 20

NIGHTTIME TYPE B PRIMARY SERVICE
TO "WHITE AREAS"

Station WHAM (Class I-A) - Rochester, N. Y.
Present: 1180 kc 50 kw (Night)
Proposed: 1180 kc 750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

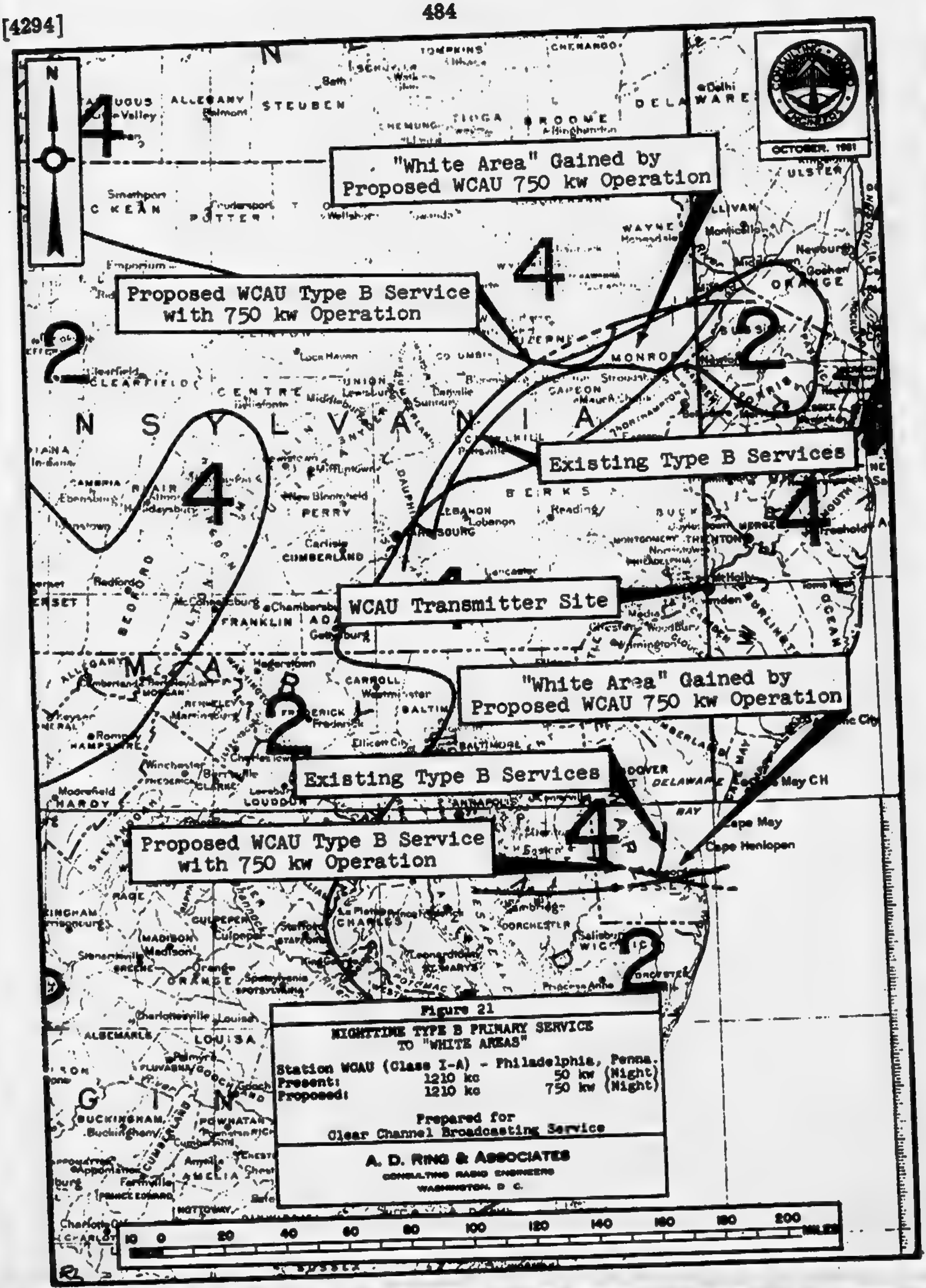

N
4
"White Area" Gained by Proposed WCAU 750 kw Operation
OCTOBER, 1961
4
Proposed WCAU Type B Service with 750 kw Operation
2
2
Existing Type B Services
4
4
WCAU Transmitter Site
"White Area" Gained by Proposed WCAU 750 kw Operation
2
Existing Type B Services
4
Proposed WCAU Type B Service with 750 kw Operation
2
0 20 40 60 80 100 120 140 160 180 200 MILES

Figure 21

NIGHTTIME TYPE B PRIMARY SERVICE
TO "WHITE AREAS"

Station WCAU (Class I-A) - Philadelphia, Penna.
Present: 1210 kc 50 kw (Night)
Proposed: 1210 kc 750 kw (Night)

Prepared for
Clear Channel Broadcasting Service

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

PETITION FOR RECONSIDERATION AND CONDITIONAL REQUEST FOR EVIDENTIARY HEARING

The Goodwill Stations, Inc., licensee of standard broadcast station WJR, Detroit, by its attorneys, pursuant to Section 405 of the Communications Act and Section 1.191 of the Rules, herewith respectfully requests reconsideration of the Report and Order released in this proceeding on September 14, 1961, and other relief more fully described below. *

I. Interest of WJR

1. WJR, a pioneer standard broadcast station first licensed in 1922, operates at Detroit, Michigan, on Class 1-A frequency 760 kc

[4358]

with power of 50,000 watts. WJR has been vitally interested in this rule-making proceeding from its outset, and has participated in all stages as a member of the Clear Channel Broadcasting Service.

2. WJR operates on a 24-hour-a-day basis and during nighttime hours serves a vast area of northeastern United States and the Middle West with its skywave signal. Many of the thousands of rural listeners in WJR's nighttime secondary service area depend on it for news and a large variety of special feature programming, much of it -- such as WJR's outstanding agricultural programs -- directed specifically to the needs and preference of rural listeners. The extent of WJR's regular nighttime rural listenership beyond its primary service area

---

* This petition is submitted within 30 days (computed according to Section 1.18 of the Rules) from the date of public release of the full text of the Report and Order in this proceeding. Petitioner is aware of the recent ruling by the Commissioner (20 R. R. 1559) to the effect that a petition for reconsideration of a decision in a rulemaking proceeding may be filed within 30 days of publication of the decision in the Federal Register. This petition is presented somewhat in advance of the final date which would be applicable under the foregoing ruling in order to obviate any possible contentions by interested parties in the future that it was not timely filed.

is indicated by the fact that during a four-month period WJR received *unsolicited* mail from 47 counties in 20 states located beyond its nighttime primary service area and from Canada and the District of Columbia, all relating to a regularly scheduled midnight-to-5 a.m. program carried over the station. *

3. It has been WJR's position throughout this proceeding, as a member of the Clear Channel Broadcasting Service, that Class I-A standard broadcast stations should be authorized to operate with power in excess of the present limitation of 50 kilowatts and that with such higher power (and a continuation of the protection presently provided by the Rules to their nighttime transmissions from co-channel interference)

[4359]

these stations could achieve a significant improvement in their primary and secondary service areas, bringing a new groundwave or skywave signal to thousands of listeners now receiving little or no reliable radio service. The Report and Order released in this proceeding on September 14, 1961, looks to the permanent authorization of a second full-time station on 760 kc at San Diego, California. The Report and Order concedes (paragraphs 79, 81) that such an authorization would be of no assistance in solving "the main issues of the Clear Channel Proceeding," but nevertheless contemplates duplication of 760 kc during nighttime hours, in an area presently receiving an abundance of nighttime primary radio service, for the "special limited purpose" of solving a problem posed by the U. S. - Mexican radio treaty under which station KFMB, presently authorized to use 540 kc at San Diego, must find another frequency. Thus the Report and Order recognizes, as it must, that the proposed duplication of 760 kc is essentially irrelevant to the stated purpose of the present proceeding.

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* See CCBS comments in response to Further Notice of Proposed Rule-making, August 15, 1958, Exhibit 11.

II. Request for Reconsideration

4. As noted in Commissioner Lee's eloquent dissent to the Report and Order in this proceeding, its underlying purpose from the start "has been to bring more and better radio service to vast areas which are without a dependable service." WJR agrees with Commissioner Lee that the "solution" adopted by a majority of the Commission could

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scarcely have been more ineffectual if the entire case had been "swept under the rug."

5. In numerous presentations throughout the long course of this proceeding, CCBS and its members have demonstrated beyond question that because of the physical laws of nature, the only way to bring reliable radio service to substantially all parts of the United States during nighttime hours is through improvement of the present secondary service being provided by the nation's two dozen Class I-A standard broadcast stations. Essential to such an objective are the twin criteria of higher power and freedom from objectionable interference during nighttime hours. By refusing to authorize a lifting of the present, anachronistic power ceiling on Class I-A stations, and by amending the Rules so as to provide for duplication of half of the existing Class I-A stations during nighttime hours by new co-channel stations, the Report and Order in this proceeding deals mortal blows to both aspects of the only practicable long-range means of improving service to rural areas.

6. The Report and Order dismisses the readily available means for improvement of nighttime radio service in the United States through expanded secondary coverage by existing Class I-A stations on the premise that the solution to the problem lies in increased groundwave service to areas and populations not now receiving such service at night. Even assuming the validity of this premise, however, the result reached

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in the Report and Order does not begin to accomplish the stated objective of significantly improving nighttime groundwave service. Indeed, as is demonstrated at length in the petition for reconsideration being filed simultaneously herewith by Clear Channel Broadcasting Service, the authorization of higher power to existing Class I-A stations, while vastly improving their *secondary* service, would also bring about a greater improvement in nighttime *groundwave* service to "white areas" than all of the unrealistic "Class II-A" stations created by the Report and Order - even if it were possible for these highly restricted new stations to operate under optimum conditions. Thus the Report and Order is successful neither in its treatment of the need for improved secondary service nor its supposed "solution" to the problem of improving groundwave service to nighttime "white areas."

7. WJR submits that, on reconsideration, the Commission should recognize at long last that the only realistic way to improve existing radio service -- both primary and secondary -- during nighttime hours is through continued protection and eventual expansion of the service areas of established Class I-A broadcast stations now operating on the clear channels. In support of this contention, WJR hereby adopts as its own the CCBS petition for reconsideration being filed simultaneously herewith. In the event that the Commission acts favorably on this petition, the further relief requested by WJR in its own behalf in this petition would be unnecessary.

[4362]

III. Conditional Request for Evidentiary Hearing

8. In the event that the Commission, upon reconsideration of its Report and Order, once again concludes that the public interest would be served by duplication during nighttime hours of one or more existing Class I-A broadcast stations and that WJR should be among those stations duplicated, WJR hereby asserts its right, as an existing licensee of the Commission whose outstanding license would be modified by finalization of the amendments to the Rules proposed in the Report and Order, to show at an evidentiary hearing that, at least in its case,

duplication of its frequency during nighttime hours in San Diego would not be in the public interest.

A. The Report and Order Looks to a Modification of WJR's Outstanding License Which Cannot Be Made Final Until WJR Has Been Accorded an Evidentiary Hearing.

9. As an existing and long-time licensee of the Commission, WJR is not only bound by the Commission's outstanding rules and regulations, but is also entitled to their protection. By virtue of the classification of 760 kc as a Class I-A frequency in Section 3.25 of the Rules and the resulting protection requirements set forth in Section 3.182(v), WJR's entire nighttime secondary service area is at the present time protected against interference from co-channel stations. The Report and Order in this proceeding proposes a modification of the Commission's rules which would create a new class of broadcast stations, one of which

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would be assigned to 760 kc for operation during nighttime hours, with a power of 5 kw, at San Diego.

10. There can be no doubt that the final adoption of the foregoing change in the Commission's allocation rules would constitute, "in fact and in substance", a modification of WJR's outstanding license. Federal Communications Commission v. National Broadcasting Company (KOA), 319 U. S. 239, 245 (1943). * This being so, it follows that the rule changes proposed in the Report and Order may not be made final, as against WJR, until it shall have been given a reasonable opportunity to show cause at a public hearing why such a modification of its license would be contrary to the public interest.

11. WJR's right to an evidentiary hearing before the modification of its license proposed in the Report and Order becomes final is in no way curtailed by the general policy decisions reached by the Commission in this rulemaking proceeding. Even if the stated purpose of this

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* KOA held that the rules prohibiting nighttime operation on Class I-A channels

> "were incorporated into the terms of KOA's license ... To alter the rules so as to deprive KOA of what had been assigned to it, and to grant an application which would create interference on the channel given it, was in fact and in substance to modify KOA's license. This being so, Section [316] required that it be made a party to the proceeding. We can accord no other meaning to the language of the proviso which requires that the holder of the license which is to be modified must have notice in writing of the proposed action and the grounds therefor and must be given a reasonable opportunity to show cause why an order of modification should not issue." (319 U. S. at pp. 245-6).

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proceeding had been -- as it certainly was not -- to explore the various alternatives to a solution of the KFMB problem, a general rulemaking proceeding would provide no substitute for the weighing, in an adjudicatory context, of the specific evidence bearing on the ultimate public interest question of whether a new full-time station should be authorized to operate on 760 kc at San Diego.

12. This is all the more true where, as the Report and Order in this proceeding acknowledges, the questions considered in the rulemaking proceeding were directed primarily to an inquiry wholly unrelated to the KFMB problem -- namely, the exploration of means to bring new nighttime radio service to areas and populations presently without such service. Thus, the perfunctory "solution" to the problem of finding a new frequency for KFMB approved in the Report and Order was not only procedurally defective but was essentially *dehors* the record even in the rulemaking proceeding.

13. Nor may WJR's right to an evidentiary hearing before the proposed assignment of a co-channel full time station to 760 kc at San Diego is made final be abridged by the fact that WJR's currently outstanding license was recently renewed subject to its acceptance of new nighttime interference from such a station. If the Commission could so easily defeat the hearing rights conferred by Sections 309 and 316 of the Communications Act, the way would be open for it substantially

to "nullify rights which the Act confers, though it preserves them in form." American Broadcasting Company v. Federal Communications Commission, 89 App. D. C. 298, 306, 191 F. 2d 492, 501 (1951).

14. Indeed, the Commission recognized, in an analogous situation in the past, that the mere fact that a station's application for renewal of license comes due at or about the time the Commission is considering modifying that authorization in no way diminishes the licensee's right to show cause at a hearing why the modification should not be made effective. In the proceedings leading to the appeal in Peoples Broadcasting Company v. Federal Communications Commission, 93 App. D. C. 78, 209 F. 2d 286 (1953), the Commission, after rulemaking, determined to substitute Channel 8 for Channel 4 at Lancaster, Pennsylvania, and issued an appropriate order to WGAL, Inc., the licensee of Channel 4, to show cause pursuant to Section 316 of the Act why its frequency should not be modified in accordance with the rulemaking decision. Only a few days after issuance of the show cause order, WGAL, Inc. filed a timely application for renewal of its license. The Commission thereupon renewed the license of the station for Channel 4, subject to the outcome of the show cause hearing. In its later decision affirming the Commission's action, the Court noted this procedure with apparent approval. Peoples Broadcasting Company v. Federal Communications Commission supra, 93 App. D. C. at p. 80, 209 F. 2d at p. 287.

15. It is recognized that the foregoing interpretation of WJR's rights as an existing licensee under the Communications Act may be to some degree at variance with the Commission's recent disposition of a similar contention in connection with the Bakersfield, California deintermixture proceedings. See Marietta Broadcasting, Inc., 21 R. R. 78 (1961). In that case, contrary to both the plain meaning of the statute as interpreted by the courts and to its own previous procedures in similar instances, * the Commission held that an existing television

station whose frequency is changed as a result of rulemaking is entitled only to an evidentiary hearing on the question of whether its license should be modified for the remainder of the current license period, and that even this question does not permit a reappraisal of the merits of the conclusions reached in the rulemaking. It is obvious, however, that factual dissimilarities exist between a specific television deintermixture proceeding such as the Bakersfield case and the general investigation leading to the Report and Order in this case. Most prominent among such distinctions is the fact that, in the television case, the initial rulemaking proposal is directed to the specific channel change ultimately adopted and made the basis for modification of the outstanding license;

whereas in this proceeding no such specific modification was ever proposed until long after completion of the presentation of evidence and the eve of the final decision. Television deintermixture proceedings are directed in most cases to an individual station, and consequently that station has full notice from the outset of the exact terms of the proposed modification of its license. This proceeding, on the other hand, was a general, industry-wide investigation affecting numerous existing licensees and directed primarily to a probelm -- nighttime service to white areas -- entirely irrelevant to the problem which the Commission proposed to solve by duplicating WJR at San Diego. The need for an evidentiary opportunity to demonstrate that the specific modification of license proposed as a result of the rulemaking would not be in the public interest is thus far greater in the case of WJR than in the case of an individual television station whose frequency is changed in a rulemaking proceeding.

16. Assuming, however, that the Commission deems WJR's request for an evidentiary hearing to be governed by the same doctrines

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* See Evansville Deintermixture Case, 15 R. R. at p. 1586 (1957); Fresno Deintermixture Case, 15 R. R. at p. 1597 (1957).

which applied in the Bakersfield case, then WJR requests that the Commission reconsider its action in that proceeding to the extent that it held that a licensee's right to an evidentiary hearing prior to modification is coterminous with the expiration date in its presently outstanding authorization.

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B. In an Evidentiary Hearing WJR Would Show That, Regardless of the Wisdom of Duplication of Class I-A Frequencies Generally, Assignment of a Second Fulltime Station to 760 kc at San Diego Would be Contrary to the Public Interest.

17. Although it would appear that the burden of proof is imposed on the Commission by Section 316 of the Act, WJR in asserting its right to a prior evidentiary hearing on this question, is fully prepared to go forward at such a hearing with the introduction of evidence which would show beyond peradventure that, regardless of the overall ultimate merits of duplication of Class I-A frequencies on a national basis, it would be plainly contrary to the public interest to authorize a second station on 760 kc at San Diego as proposed in the Report and Order herein.

18. WJR is prepared, and hereby offers, to prove at an adjudicatory hearing that the proposed duplication of 760 kc at San Diego would be contrary to the public interest for at least the following reasons:

1) There are other frequencies than 760 kc better or as well suited for use on a fulltime basis at San Diego with power of 5 kw.

2) The great potential for increased nighttime groundwave service to white areas in northern Michigan through an eventual increase in power by WJR requires that 760 kc be protected against any co-channel interference during nighttime hours.

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3) The need for WJR's established secondary service which would be lost through interference from a fulltime station at San Diego on 760 kc outweighs any advantage attached to the use of this frequency by KFMB.

4) The continued protection of 760 kc against objectionable interference during nighttime hours would serve important national defense and emergency military communications purposes.

19. Each of the foregoing issues is directly relevant to the final determination of whether it would be in the public interest to modify WJR's existing license in the manner proposed in the Report and Order in this proceeding. None of the factual questions asserted in the foregoing issues has been answered or even explored in the general rulemaking leading to the Report and Order herein. Such issues may be resolved definitively only in "the crucible of an evidentiary hearing," Evansville Deintermixture Case, 15 R. R. 1586f (1957). Exploration of the important factual questions raised therein is not merely a matter of satisfying WJR's right to a hearing before its license is modified; it is also the Commission's duty to determine, under Section 307(b) of the Communications Act, whether the assignment of a second fulltime station to 760 kc at San Diego would promote a more efficient, fair and equitable distribution of available radio frequencies than would be possible from the continued utilization and improvement of WJR's existing nighttime interference-free primary and secondary service. Cf. Beaumont

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Broadcasting Corporation v. Federal Communications Commission, 91 App. D. C. 111, 202 F. 2d 306 (1952).

20. The attached engineering affidavit of WJR's consulting engineers is not meant to be inclusive of the proof which WJR would offer at the hearing it hereby requests. However, it indicates the general technical basis for the factual allegations advanced in the

foregoing issues. On the assumptions set forth in this affidavit, a change in frequency by KFMB at San Diego to 760 kc (which would bring no new nighttime radio service to presently underserved areas), would have the undesirable effect of forestalling possible future improvement of WJR's present facilities at Detroit which would bring a first nighttime groundwave service to more than 230,000 persons in northern Michigan now without such a service. Moreover, the same affidavit shows that operation by KFMB on 760 kc at San Diego would cause objectionable interference to vast areas and populations now receiving WJR's nighttime skywave transmissions. The affidavit also shows that there are other frequencies which may be used either as efficiently or more efficiently than 760 kc by KFMB at San Diego without the foregoing substantial disadvantages to WJR's present and possible future nighttime service. Without more, these facts establish that, prima facie, it would be plainly contrary to the public interest to use 760 kc for a fulltime station at San Diego as proposed in the Report and Order in this proceeding.

IV. Conclusion

21. For the foregoing reasons, WJR respectfully requests that the Commission

1) Reconsider and set aside its Report and Order in this proceeding for the reasons stated in the Petition for Reconsideration being filed simultaneously herewith by CCBS.

2) In the event that upon reconsideration the general policy determinations reached in the Report and Order are not set aside, institute an appropriate adjudicatory hearing in which WJR shall be afforded a reasonable opportunity to demonstrate that the specific assignment of a fulltime station to 760 kc at San Diego would be plainly contrary to the public interest.

22. In aid of the foregoing relief, WJR hereby supports and adopts as its own the motion, being filed simultaneously herewith by CCBS, to stay the effective date of the new rules proposed in the

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Report and Order pending disposition of all petitions for reconsideration or other relief which may be filed in this proceeding.

Respectfully submitted,
THE GOODWILL STATIONS, INC.
BY ______________________
Reed T. Rollo

____
Percy H. Russell

____
R. Russell Eagan

____
Aloysius B. McCabe
of
Kirkland, Ellis, Hodson,
Chaffetz & Masters
World Center Building
Washington, D. C.

its Attorneys

October 16, 1961

[4373]

ENGINEERING STATEMENT ON BEHALF OF THE GOODWILL STATIONS, INC.

DOCKET 6741

October 16, 1961

[4374]

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
1710 H STREET, N.W.
WASHINGTON 6, D.C.

* * *

* * *

October 16, 1961

City of Washington)
)ss
District of Columbia)

Howard T. Head, being first duly sworn, upon oath deposes and says that he is a consulting radio engineer, a partner in the firm of A. D. Ring & Associates, with offices at 1710 H Street, N. W., Washington, D. C. He is a registered professional engineer (Reg. No. 2521) in the District of Columbia. His qualifications as an engineer are a matter of record with the Federal Communications Commission.

The firm of A. D. Ring & Associates has been retained by the Goodwill Stations, Inc., licensee of Standard Broadcast Station WJR, Detroit, Michigan, to make engineering studies of the Commission's Report and Order in Docket 6741, released September 14, 1961. The Commission's Order provided, among other things, to assign Station KFMB, San Diego, California, now operating on 540 kc, to 760 kc. WJR is licensed for operation on 760 kc with a power of 50 kw, unlimited time, as a Class I-A station. The distance from Detroit to San Diego is approximately 1,970 miles.

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The Commission's Order terminating the proceedings in Docket 6741 provided for the assignment of a single Class II-A station to 13 of the Class I-A clear channels. According to the Commission's Order, the principal purpose of these assignments was intended to be the provision of the maximum possible amount of primary groundwave service to "white" areas at night. Studies have been made to determine whether the use of 760 kc by KFMB would provide such service to "white" areas. These studies show that KFMB operating on 760 kc in accordance with the provisions of the Commission's Order would not provide primary service at night to any area and population not now receiving primary nighttime service.

Engineering studies show that a substantial area and population could be provided with a first primary service at night by increasing power of WJR from 50 kw to 750 kw on 760 kc. Figure 1 is a map showing portions of the nighttime Type B service contours for WJR as defined in Exhibit 109 in Docket 6741, showing the improvement in Type B service which would be provided by the WJR power increase. This map also shows those areas which now receive Type B service from stations other than WJR. It will be seen from Figure 1 that an increase in power of WJR from 50 kw to 750 kw would provide a first nighttime primary (Type B) service to an area of substantial size which does not now receive primary service at night from any radio station. This area includes 234,868 persons residing within an area of 9,550 square miles.

Not only would the WJR power increase result in a substantial improvement in the Type B service rendered at night, but it would also provide a substantial improvement in all types of skywave service (Types D, E and F) rendered by WJR at night. This improvement is illustrated by exhibits previously submitted by Clear Channel Broadcasting Service in this proceeding.

In contrast, the assignment of KFMB to 760 kc as a 5 kw Class II-A unlimited-time station to California on the basis proposed by the Commission would permit WJR to render interference-free service at night only to the 0.5 mv/m 50% skywave contour for the present 50 kw operation, and interference from KFMB would result in progressive degradation of the WJR service beyond the 0.5 mv/m 50% skywave contour. This is illustrated by Figure 2, which shows the WJR 0.5 mv/m 50% skywave contour and interference which would be caused by a typical directional antenna providing only the protection contemplated by the Commission's Order.

The assignment of 760 kc to KFMB would involve overlapping 2 mv/m and 25 mv/m contours with KBIG, Avalon, California, on 740 kc, in violation of Section 3.37 of the Commission's Rules. Studies have been made to determine whether frequencies other than 760 kc might be employed, which would not involve this overlap. These studies show that 830 kc could be assigned for the use of KFMB on the same basis as the Commission proposes to assign 760 kc, without involving overlapping 2 mv/m and 25 mv/m contours or, in fact, without requiring any other waivers of the Commission's Rules.

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If a waiver of Rule 3.37 is to be entertained, there appear to be some technical possibilities of operation on 1000 kc, a Class I-B clear channel. The use of a directional antenna would be required to avoid or minimize interference to other stations on 1000 kc and the adjacent channels, and a waiver of Rule 3.37 would be required because of overlapping 2 mv/m and 25 mv/m contours with Station KGBS, Los Angeles, on 1020 kc.

In making the engineering studies reflected in this affidavit, a conventional non-directional radiator having a height of 220 degrees has been assumed for Station WJR operating with a power of 750 kw in order to provide anti-fading characteristics. The engineering exhibits already in the record in this docket have been relied on in determining the location of Type B service contours of other authorized stations. Studies of the treaty requirements of the North American Regional Broadcasting Agreement indicate that on certain of the clear channels, the antenna systems for the 750 kw operation of the Class I-A stations must be modified from those upon which the earlier exhibits were based. Time has not permitted the preparation of new antenna designs as a basis for the studies in this affidavit, and the earlier work has been relied on. General studies of the antenna characteristics, however, indicate that by giving proper attention to the antenna design, especially anti-fading characteristics, service gains closely approaching those reflected in the earlier exhibits in this

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proceeding can be achieved while meeting the NARBA requirements.

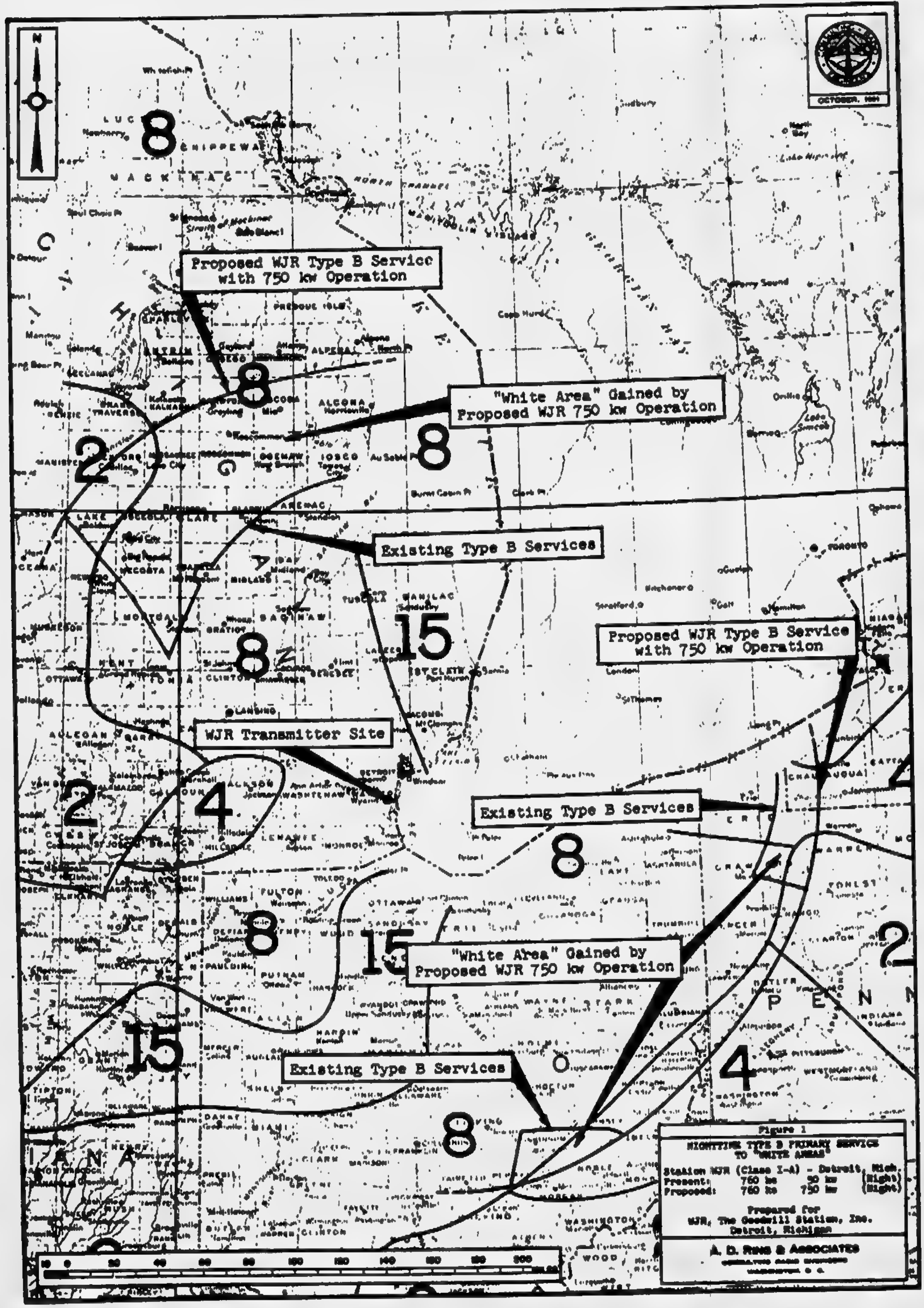
The California station was assumed to protect WJR in accordance with the requirements of the Commission's Order and nighttime limitations in California were calculated using the propagation curves adopted for this purpose by the Commission. Groundwave contours for station KFMB were calculated in the usual manner.

Affiant states that the calculations and exhibits in this report were made by him personally or under his direction and that all facts contained herein are true of his own knowledge except where stated to be on information or belief, and as to those facts, he believes them to be true.

/s/ Howard T. Head
Affiant

[JURAT dated October 16, 1961]

N379



OCTOBER, 1951
8
Proposed WJR Type B Service with 750 kw Operation
8
"White Area" Gained by Proposed WJR 750 kw Operation
2
8
Existing Type B Services
15
8
Proposed WJR Type B Service with 750 kw Operation
WJR Transmitter Site
2
4
Existing Type B Services
8
8
15
"White Area" Gained by Proposed WJR 750 kw Operation
2
15
Existing Type B Services
4
8
4

Figure 1

NIGHTTIME TYPE B PRIMARY SERVICE TO "WHITE AREAS"

Station WJR (Class I-A) - Detroit, Mich.
Present: 760 kc 50 kw (Night)
Proposed: 760 kc 750 kw (Night)

Prepared for
WJR, The Goodwill Station, Inc.
Detroit, Michigan

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON D. C.

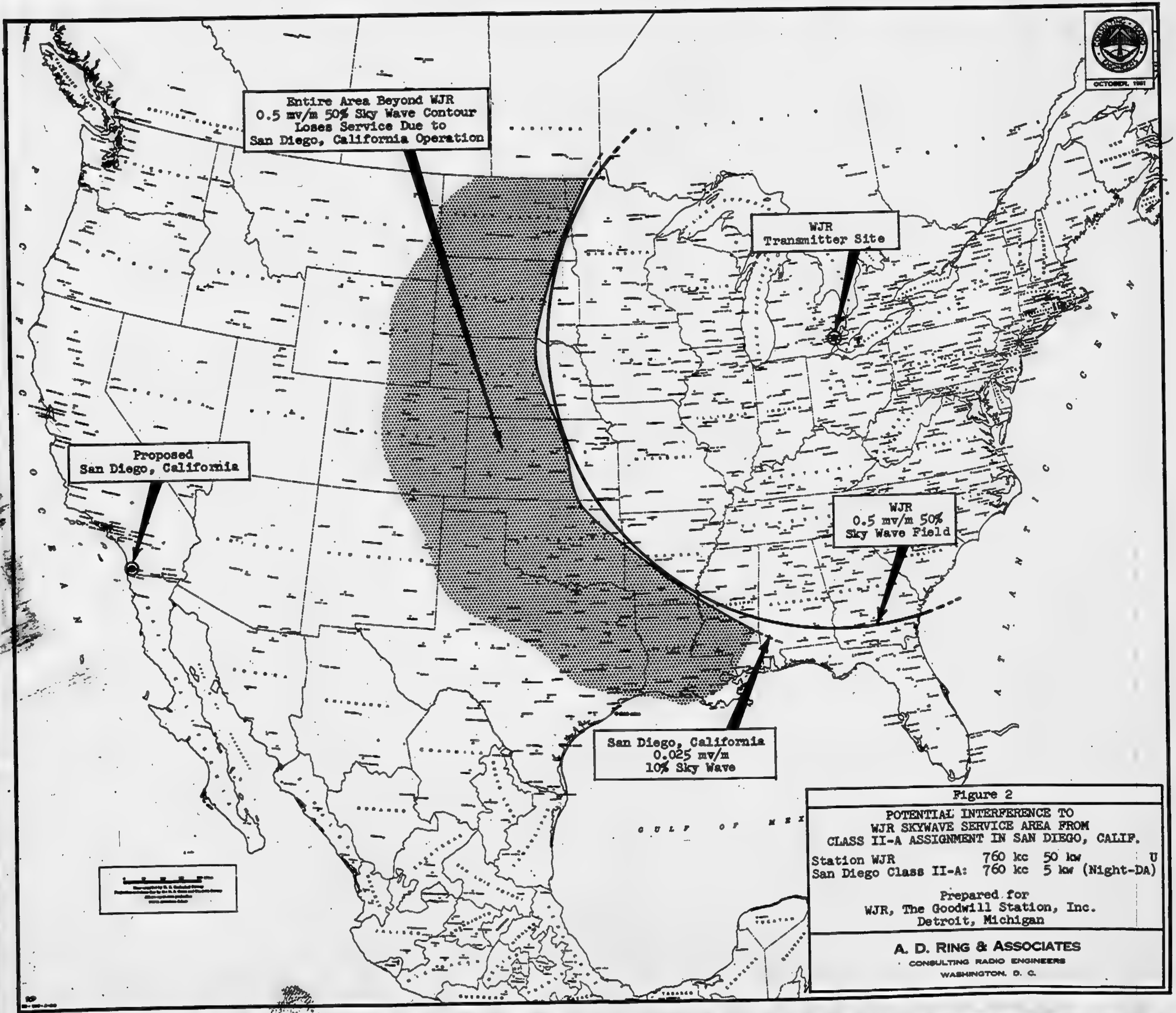

OCTOBER, 1951
Entire Area Beyond WJR 0.5 mv/m 50% Sky Wave Contour Loses Service Due to San Diego, California Operation
WJR Transmitter Site
Proposed San Diego, California
WJR 0.5 mv/m 50% Sky Wave Field
San Diego, California 0.025 mv/m 10% Sky Wave
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEX

Figure 2

POTENTIAL INTERFERENCE TO
WJR SKYWAVE SERVICE AREA FROM
CLASS II-A ASSIGNMENT IN SAN DIEGO, CALIF.

Station WJR 760 kc 50 kw U
San Diego Class II-A: 760 kc 5 kw (Night-DA)

Prepared for
WJR, The Goodwill Station, Inc.
Detroit, Michigan

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

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PETITION FOR RECONSIDERATION AND CONDITIONAL REQUEST FOR EVIDENTIARY HEARING

WGN, Inc., a party to the above-captioned proceeding, by its attorneys, pursuant to Section 405 of the Communications Act and Section 1.191 of the Rules, herewith respectfully requests reconsideration of the Report and Order released in this proceeding on September 14, 1961 and other relief more fully described below. *

I. Interest of WGN

1. WGN, Inc., as a long-time licensee of one of the nation's pioneer clear channel broadcast stations, is vitally interested in this rulemaking proceeding, and has actively participated in it from its

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* This petition is submitted within 30 days (computed according to Section 1.18 of the Rules) from the date of public release of the full text of the Report and Order in this proceeding. Petitioner is aware of the recent ruling by the Commission (20 R. R. 1559) to the effect that a petition for reconsideration of a decision in a rulemaking proceeding may be filed within 30 days of publication of the decision in the Federal Register. This petition is presented somewhat in advance of the final date which would be applicable under the foregoing ruling in order to obviate any possible contentions by interested parties in the future that it was not timely filed.

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inception in 1945 both on an individual basis and as a member station of the Clear Channel Broadcasting Service. WGN has been licensed continuously since 1922, and broadcasts on Class I-A frequency 720 kc with power of 50,000 watts at Chicago.

2. From the outset of its operations nearly 40 years ago, WGN has visualized its listening audience as consisting not merely of Chicagoans but as a cross-section of the entire Middle West - an audience comprised of families on remote farms and in small towns and villages as well as the larger cities. In line with this concept, WGN programs its station so as to meet the needs of all these listeners. At the present time, WGN operates on a 24-hour-a-day basis, bringing

numerous and varied programs of an educational, discussion, religious, agricultural, entertainment and special events nature to its listening audience. WGN has a large and established following in the outlying rural and small town regions of the Middle West, and regularly broadcasts many programs of special appeal and particular value to the residents of these areas.

3. WGN's established and extensive program service to rural and small town America provides a needed service during nighttime hours to thousands of listeners residing in areas well beyond the station's primary (groundwave) service area. The extent of the large listening audience which depends on WGN's secondary (skywave) signal

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during nighttime hours was shown in a mail survey made over the station during the week of June 17 to June 25, 1958, the results of which were summarized in comments submitted at an earlier stage of this proceeding by CCBS. * This survey showed that during the week in question WGN's nighttime broadcasts were received and listened to by residents of no less than 24 states located beyond WGN's nighttime groundwave service area, as well as the District of Columbia and Canada. Mail was received from listeners to WGN's nighttime secondary service as far west as California and as far east as Maine.

4. It has been WGN's position throughout this proceeding that an increase in its authorized operating power is definitely needed in order to bring about a substantial and meaningful improvement of its present groundwave and secondary coverage during nighttime hours. The amendments to the Commission's Rules proposed in the Report and Order released in this proceeding on September 14, 1961, would, as a practical matter, make it difficult if not impossible for WGN ever to achieve its goal of improved service through higher power, and would on the contrary deprive WGN of a substantial and meaningful part of its existing protection against nighttime interference.

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* See CCBS comments in response to Further Notice of Proposed Rulemaking, August 15, 1958, Exhibit 9.

II. Request for Reconsideration

5. As noted in Commissioner Lee's eloquent dissent to the Report and Order in this proceeding, its underlying purpose from the start "has been to bring more and better radio service to vast areas which are without a dependable service." WGN agrees with Commissioner Lee that the "solution" adopted by a majority of the Commission could scarcely have been more ineffectual if the entire case had been "swept under the rug."

6. In numerous presentations throughout the long course of this proceeding, CCBS and its members have demonstrated beyond question that because of the physical laws of nature, the only way to bring reliable radio service to substantially all parts of the United States during nighttime hours is by improvement of the present secondary service being provided by the nation's two dozen Class I-A standard broadcast stations. Essential to such an objective are the twin criteria of higher power and freedom from objectionable interference during nighttime hours. By refusing to authorize a lifting of the present, anachronistic power ceiling on Class I-A stations, and by amending the Rules so as to provide for duplication of half of the existing Class I-A stations during nighttime hours by new co-channel stations, the Report and Order in this proceeding deals mortal blows to both aspects of the only practicable long-range means of improving service to rural areas.

7. The Report and Order dismisses the readily available means for improvement of nighttime radio service in the United States through expanded secondary service by existing Class I-A stations on the premise that the solution to the problem lies in increased groundwave service

to areas and populations not now receiving such service at night. Even assuming the validity of this premise, however, the result reached in the Report and Order does not begin to accomplish the stated objective of significantly improving nighttime groundwave service. Indeed, as is demonstrated at length in the petition for reconsideration being filed simultaneously herewith by Clear Channel Broadcasting Service, the authorization of higher power to existing Class I-A stations, while vastly improving their secondary service, would also bring about a substantially greater improvement in nighttime groundwave service to "white areas" than all of the unrealistic "Class II-A" stations created by the Report and Order, even if it were possible for these highly restricted new stations to operate under optimum conditions. Thus the Report and Order is successful neither in its treatment of the need for improved secondary service nor its supposed "solution" to the problem of improving groundwave service to nighttime primary "white areas."

8. WGN submits that, on reconsideration, the Commission should recognize at long last that the only realistic way to improve

existing radio service - both primary and secondary - during nighttime hours is through continued protection and eventual expansion of the service areas of established Class I-A broadcast stations now operating on the clear channels. In support of this contention, WGN hereby adopts as its own the CCBS petition for reconsideration being filed simultaneously herewith. In the event that the Commission acts favorably on the CCBS petition, the further relief requested by WGN in its own behalf in this petition would be unnecessary.

III. Conditional Request for Evidentiary Hearing

9. In the event that the Commission, upon reconsideration of its Report and Order, once again concludes that the public interest would be served by duplication during nighttime hours of one or more existing Class I-A broadcast stations and that WGN should be among

those stations duplicated, WGN hereby asserts its right, as an existing licensee of the Commission whose outstanding authorization would be modified by finalization of the amendments to the Rules proposed in the Report and Order, to show at an evidentiary hearing that, at least in its case, duplication of its frequency during nighttime hours would not be in the public interest.

A. The Report And Order Looks to a Modification of WGN's Outstanding License Which Cannot Be Made Final Until WGN Has Been Accorded an Evidentiary Hearing.

[4387]

10. As an existing and long-time licensee of the Commission, WGN is not only bound by the Commission's outstanding rules and regulations, but is also entitled to their protection. By virtue of the classification of 720 kc as a Class I-A frequency in Section 3.25 of the Rules and the resulting protection requirements set forth in Section 3.182(v), WGN's entire nighttime secondary service area is protected against interference from co-channel stations. The Report and Order in this proceeding proposed a modification of the Commission's rules which would create a new class of broadcast stations, one of which would be assigned to 720 kc for operation during nighttime hours with a power of at least 10 kilowatts.

11. There can be no doubt that final adoption of the foregoing change in the Commission's allocation rules for standard broadcast stations would constitute, "in fact and in substance," a modification of WGN's outstanding license. Federal Communications Commission v. National Broadcasting Company (KOA), 319 U. S. 239, 245 (1943).*

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* KOA held that the rules prohibiting nighttime operation on Class I-A channels

> "were incorporated into the terms of KOA's license ... To alter the rules so as to deprive KOA of what had been assigned to it, and to grant an application which would create interference on the channel given it, was in fact and in substance to modify KOA's license. This being so,

> Section [316] required that it be made a party to the proceeding. We can accord no other meaning to the language of the proviso which requires that the holder of the license which is to be modified must have notice in writing of the proposed action and the grounds therefor and must be given a reasonable opportunity to show cause why an order of modification should not issue." (319 U. S. at pp. 245-6)

[4388]

This being so, it follows that the rule changes proposed in the Report and Order may not be made final, as against WGN, until it shall have been given a reasonable opportunity to show cause at a public hearing why such a modification of its license would be contrary to the public interest.

12. WGN's right to an evidentiary hearing before the modification of its license proposed in the Report and Order in this proceeding is in no way affected by the fact that a general rulemaking proceeding has been held on the *overall policy question* of whether existing Class I-A frequencies should be duplicated during nighttime hours. Such a proceeding provides no substitute for weighing in an adjudicatory context of the actual evidence bearing on and relevant to the ultimate public interest question involved in the authorization of a new nighttime station on a frequency not hitherto subject to objectionable co-channel interference during nighttime hours.

13. This is particularly true here in view of the protracted past history of this proceeding. The "evidentiary" phases of this investigation were concluded fourteen years ago this month in October, 1947. The engineering and other evidence submitted to the Commission in the *en banc* hearing held during 1946 and 1947, moreover, was all addressed to the general policy question posed by the need of existing Class I-A stations for higher power and the inconsistent claim that

[4389]

nighttime service could be improved by a duplication of those stations. At the time of the evidentiary presentation herein the Commission's present proposal to authorize a new Class II-A station on 720 kc somewhere in Nevada or Idaho had not yet been formulated. Obviously, WGN did not have notification in writing of such a proposed modification of its license at the time nor, indeed, did it receive any such specific notification until release of the Further Notice of Proposed Rulemaking in this proceeding in April, 1958.

14. The written submissions filed in this proceeding in April, 1958 also fall short of the adjudicatory hearing required by the Communications Act before modification of the licenses of existing broadcast stations. Such modifications may be made final only where the licensee has had an opportunity to present evidence, to cross-examine parties advocating the modification, and to present oral argument to the Commission on the questions of fact and law involved.

15. Nor is WGN's right to an evidentiary hearing on the proposed assignment of a co-channel nighttime broadcast station to 720 kc in Nevada or Idaho abridged by the fact that its currently outstanding license is subject to renewal before the Commission at this time. Both Section 307(d) of the Communications Act and Section 9 of the Administrative Procedure Act recognize that a license for an activity of a continuing nature, upon timely application for renewal, remains in full force and effect pending action on the renewal application. And the Communications Act is equally explicit that the renewal application may not be denied, in whole or in part, without a "full hearing" pursuant to the provisions of Section 309. The hearing required on a renewal application has been equated to the hearing required under Section 316 of the Communications Act by the Supreme Court, as follows:

> "The Commission for specified reasons may revoke any station license pursuant to the procedure prescribed in Section 312(a) . . . It may also modify a station license if in its judgment 'such action will promote the public

> interest, convenience, and necessity or the provisions of this chapter . . . will be more fully complied with.' Section 312(b). And licenses for broadcasting stations are limited to three years, the renewal being subject to the same considerations and practice which affect the granting of original applications. Section 307(d) . . . *But in all those instances the licensee is given an opportunity to be heard before final action can be taken.*" *Ashbacker Radio Corporation* v. *Federal Communications Commission*, 326 U. S. 327, 332 (1945) (emphasis supplied)

16. Indeed, the Commission has recognized in analogous situations in the past that the mere fact that a station's application for renewal of license comes due at or about the time the Commission is considering modifying that authorization in no way diminishes the licensee's right to show cause at a hearing why the modification should not be made effective. In the proceedings leading to the appeal in *Peoples Broadcasting Company* v. *Federal Communications Commission*, 93 App. D. C. 78, 209 F. 2d 286 (1953), the Commission, after rule-making, determined to substitute Channel 8 for Channel 4 at Lancaster, Pennsylvania, and issued an appropriate order to WGAL, Inc., the licensee of Channel 4, pursuant to Section 316 of the Act, to show cause why its frequency should not be modified in accordance with the rule-making decision. Only a few days after issuance of the show cause order, WGAL, Inc., filed a timely application for renewal of its license. The Commission thereupon renewed the license of the station for Channel 4, subject to the show cause proceedings. In its later decision affirming the Commission's action, the Court noted this procedure with apparent approval. *Peoples Broadcasting Company* v. *Federal Communications Commission*, *supra*, 93 App. D. C. at p. 80, 209 F. 2d at p. 287.

17. That the evidentiary hearing to which a licensee is entitled before modification of an outstanding license for broadcast activity of a continuing nature may not be denied merely because an application for renewal is pending is also apparent from a consideration of the incongruous results which would follow if the converse were true. Since the Commission may grant licenses of shorter duration than the maximum three years permitted for broadcast stations by the Communications Act (Section 307(d), as amended) it could easily deprive existing licensees of any adjudicatory hearing at all prior to modification of their licenses merely by issuing licenses for brief periods. The way would thus be open for the Commission substantially to "nullify rights which the Act confers, though it preserves them in form." American Broadcasting Company v. Federal Communications Commission, 89 App. D. C. 298, 306, 191 F. 2d 492, 501 (1951). Plainly, Congress could not have intended that the specific and express hearing rights conferred on existing licensees by Sections 309 and 316 of the Act could be so easily defeated.

18. Finally, it has been repeatedly stressed on judicial review of Commission decisions that a broadcasting license, in view of the substantial investment involved, "confers a private right, although a limited and defeasible one, "which may not be abridged or taken away without traditional procedural due process. L. B. Wilson, Inc. v Federal Communications Commission, 83 App. D. C. 176, 181, 170 F. 2d 793, 798 (1948). *

19. It is recognized that the foregoing interpretation of an existing licensee's rights under the Communications Act may be to

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* In the lower court's opinion in the KOA case, National Broadcasting Company v. Federal Communications Commission, 76 App. D. C. 238, 243, 132 F. 2d 545, 556 (1942), affirmed, Federal Communications Commission v. National Broadcasting Company (KOA), 319 U. S. 239 (1943), Justice Rutledge emphasized that

"procedural due process protects [licensees] against [arbitrary administrative action], and does so *notwithstanding the broad rule-making power and discretion given the Commission concerning the manner of conducting its business.*" (Italics added.)

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some degree at variance with the Commission's recent disposition of a similar contention in connection with the Bakersfield, California, deintermixture proceedings. See *Marietta Broadcasting, Inc.*, 21 R. R. 78 (1961). In that case, contrary both to the plain meaning of the statute as interpreted by the courts and to its own previous procedures in similar instances, * the Commission held that an existing television station whose frequency is changed as a result of rule-making is entitled only to an evidentiary hearing on the question of whether its license should be modified for the remainder of the current license period, and that even this question does not permit a reappraisal of the merits of the conclusions reached in the rulemaking. It is obvious, however, that factual dissimilarities exist between a specific and individual television deintermixture proceeding such as the *Bakersfield* case and the general investigation leading to the Report and Order in this proceeding. Most prominent among such distinctions is the fact that, in the television case, the initial rulemaking proceeding is directed to the specific channel change ultimately adopted and made the basis for modification of the outstanding license; whereas in this proceeding no such specific modification was ever proposed until long after completion of the presentation of evidence and the eve of the final

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* See *Evansville Deintermixture Case*, 15 R. R. at p. 1586 (1957); *Fresno Deintermixture Case*, 15 R. R. at p. 1597 (1957).

[4394]

decision. Television deintermixture proceedings are specific and directed in most cases to an individual station, and consequently that station has full notice from the outset of the exact terms of the proposed modification of its license. This proceeding, on the other hand, was a general, industry-wide investigation affecting numerous existing licensees. The need for an evidentiary opportunity to demonstrate that the specific modification of license proposed as a result of the rulemaking would not be in the public interest is thus far greater in the case of WGN than in the case of an individual television station whose frequency is changed in a rulemaking proceeding.

20. Assuming, however, that the Commission deems WGN's request for an evidentiary hearing to be governed by the same doctrines which applied in the Bakersfield case, then WGN requests that the Commission reconsider its action in that proceeding to the extent that it held that a licensee's right to an evidentiary hearing prior to modification is coterminous with the expiration date in its presently outstanding authorization. For the reasons stated above, such a result would run contrary not only to the commands of both the Communications and Administrative Procedure Acts that licenses for activities of a continuing nature shall not be abridged without hearing, but also to the demands of constitutional due process.

B. In an Evidentiary Hearing WGN Would Show That, Regardless of the Wisdom of Duplication of Class I-A Frequencies Generally, the Assignment of a Second Station on 720 KC at Night in Idaho or Nevada Would be Plainly Contrary to the Public Interest.

21. Although it would appear that the burden of proof is imposed on the Commission by Section 316 of the Act, WGN, in asserting its right to a prior evidentiary hearing on this question, is fully prepared to go forward at such a hearing with the introduction of evidence which would show beyond peradventure that, regardless of the overall ultimate merits of duplication of Class I-A frequencies on a national basis, it would be plainly contrary to the public interest to authorize a second station on 720 kc in Nevada or Idaho under the terms of the new allocation rules proposed in the Report and Order in this proceeding.

22. In this connection, WGN wishes to make clear that it does not desire an opportunity to reargue in an evidentiary context the basic policy question of duplication versus higher power for Class I-A stations generally at issue in this rulemaking proceeding. WGN agrees with the Commission's decision in the Bakersfield Deintermixture Case, cited above, at least to the extent that it stands for the proposition that a general policy question, once determined in an otherwise valid over-all rulemaking proceeding, does not have to be relitigated in individual evidentiary hearings at the request of every licensee whose license would be affected by changes resulting from the general policy decision. This is not to say, however, that the individual impact of new rules formulated in the general rulemaking on specific stations whose licenses are being modified thereby is also impervious to further evidentiary scrutiny.

23. WGN is prepared, and hereby offers, to prove at an adjudicatory hearing that the proposed duplication of its existing Class I-A frequency by a Class II-A station located in Nevada or Idaho would be contrary to the public interest for at least the following reasons:

1) The need for the new groundwave service to nighttime white areas which would be made possible through an increase in power by WGN to 750 kw outweighs the need for the corresponding new service which could be provided by a Class II-A station in Idaho or Nevada.

2) The need for WGN's established nighttime secondary service beyond its 0.5 mv/m 50% skywave contour outweighs the need for the limited new service which would be provided by the interfering Class II-A station in Nevada or Idaho.

3) There is no community in either Idaho or Nevada capable of supporting a Class II-A station in accordance with the specifications of the Report and Order relating to power, antenna system, and service to nighttime groundwave white areas.

4) If a Class I-A frequency is necessary to provide additional nighttime groundwave service to Nevada or Idaho, there are other such frequencies better suited to this purpose than 720 kc.

5) The continued protection of 720 kc against objectionable interference during nighttime hours is required by national defense and emergency military communications considerations.

24. Each of the foregoing issues is directly relevant to the final determination of whether it would be in the public interest to modify WGN's existing license in the manner proposed in the Report and Order in this proceeding. None of the factual questions asserted in the foregoing issues has been answered or even explored in the general rulemaking leading to the adoption of the Report and Order herein. Such issues may be resolved definitively only in "the crucible of an evidentiary hearing," Evansville Deintermixture Case, 15 R. R. 1586F (1957), where the right of objection and cross-examination exists and where the validity of the evidence relevant to each issue can be tested and established. Exploration of the important factual questions raised therein is not merely a matter of satisfying WGN's right to a hearing before its license is modified; it is also the Commission's duty to determine, under Section 307(b) of the Communications Act, whether the assignment of a specific Class II-A station to 720 kc in accordance with the general policy decision reached in the Report and Order in this case would promote a more efficient, fair and equitable distribution of available radio frequencies than that which would be possible from the continued utilization and improvement of WGN's existing nighttime interference-free primary and secondary service. Cf. Beaumont Broadcasting Corporation v. Federal Communications Commission, 91 App. D. C. 111, 202 F. 2d 306 (1952).

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25. The attached engineering affidavit is not meant to be inclusive of the proof which WGN would offer at the hearing it hereby requests. Rather, it indicates the general technical basis for the factual allegations to which WGN would address its evidence in the hearing. This affidavit shows that a Class II-A station located in Hawthorne, Nevada, * in accordance with the service criteria of the Report and Order would under optimum conditions be able to bring a first nighttime groundwave service to a total population of only 8,644 persons, whereas an increase in operating power by station WGN to 750 kw would bring such a new service to almost 71,000 persons residing in Wisconsin, Michigan, and Iowa, or almost 10 times the white area population which would be served, at best, by the Class II-A station. The same affidavit shows that vast areas and populations now receiving WGN's nighttime skywave service west of Chicago would be deprived of that service by the operation of a Class II-A station on 720 kc in Nevada. Without more, these facts establish that, prima facie, a far more fair, equitable and efficient allocation of available broadcast service can be achieved by maintaining WGN's existing nighttime interference-free service and allowing WGN to increase its power than by curtailing that service to the 50% 0.5 millivolt

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* Hawthorne had a 1960 population of 2,838.

[4399]

per meter skywave contour of WGN's existing operation and authorizing a highly inefficient Class II-A station in Idaho or Nevada, even under optimum conditions for the latter operation.

IV. Conclusion

26. For the foregoing reasons, WGN respectfully requests that the Commission

1) Reconsider and set aside its Report and Order in this proceeding for the reasons stated in the

Petition for Reconsideration being filed simultaneously herewith by CCBS.

2) In the event that upon reconsideration the general policy determinations reached in the Report and Order are not set aside, institute an appropriate adjudicatory hearing in which WGN shall be afforded a reasonable opportunity to demonstrate that the specific assignment of a new Class II-A broadcast station to 720 kc in Idaho or Nevada would be plainly contrary to the public interest.

27. In aid of the foregoing relief, WGN hereby supports and adopts as its own the motion, being filed simultaneously herewith by

CCBS, to say the effective date of the new rules proposed in the Report and Order pending disposition of all petitions for reconsideration or other relief which may be filed in this proceeding.

Respectfully submitted,

WGN, INC.

By ____________________
Reed T. Rollo

____
Percy H. Russell

____
R. Russell Eagan

____
Aloysius B. McCabe
of
Kirkland, Ellis, Hodson, Chaffetz & Masters
800 World Center Building
Washington 6, D. C.
Its Attorneys

October 16, 1961

[4401]

ENGINEERING STATEMENT ON BEHALF OF WGN, INCORPORATED

DOCKET 6741

October 16, 1961

[4402]

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
1710 H STREET, N. W.
WASHINGTON 6, D. C.

* * * * * *

October 16, 1961

City of Washington)
District of Columbia).

Howard T. Head, being first duly sworn, upon oath deposes and says that he is a consulting radio engineer, a partner in the firm of A. D. Ring & Associates, with offices at 1710 H Street, N. W., Washington, D. C. He is a registered professional engineer (Reg. No. 2521) in the District of Columbia. His qualifications as an engineer are a matter of record with the Federal Communications Commission.

The firm of A. D. Ring & Associates has been retained by WGN, Inc., licensee of standard broadcast station WGN, Chicago, Illinois, to make engineering studies of the Commission's Report and Order in Docket 6741, released September 14, 1961. The Commission's Order provided, among other things, for the assignment of a Class II-A unlimited time station in the states of Nevada or Idaho on 720 kc. WGN is licensed for operation on 720 kc with a power of 50 kw unlimited time as a Class I-A station. The distance from Chicago to the nearest portion of the State of Idaho is approximately 1180 miles, and the most distant portion of Nevada is approximately 1700 miles.

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According to the Commission's Order, the Class II-A assignments which are contemplated are intended to render the maximum possible amount of primary ground wave service to "white areas" at night. Studies have been made to determine the primary service which could be rendered by a Class II-A station in Nevada or Idaho operating in accordance with the Commission's requirements as compared with any nighttime primary service to "white areas" which could be provided by an increase in power of WGN from 50 kw to 750 kw on 720 kc. These studies show that the Commission's aim of providing maximum nighttime primary service in "white areas" could be far more readily realized by the power increase of WGN than by the assignment of a new Class II-A station in Nevada or Idaho.

Figure 1 is a map showing portions of the nighttime type B service contours for WGN as defined in Exhibit 109 in Docket 6741 showing the improvement in Type B service which would be provided by the WGN power increase. This map also shows those areas which now receive Type B service from stations other than WGN. There will be seen from Figure 1 that an increase in power of WGN from 50 kw to 750 kw would provide a first nighttime primary (Type B) service to an area of substantial size which does not now receive primary service at night from any radio station.

Figure 2 is a map showing the nighttime interference-free (Type B) service contour of a possible station in Nevada on 720 kc operating with a nighttime power of 10 kw and employing a directional antenna to protect WGN. This station has been assumed to be assigned to Hawthorne, Nevada, and this

[4404]

location was chosen so as to include within the nighttime service contour the maximum possible population in Nevada not now receiving nighttime primary service.

The area and population shown on Figures 1 and 2 which do not now receive primary service at night, but which would receive primary service from each of these operations have been determined and are listed in the following table:

"White Area" Served By	Area	Population
WGN Power Increase	3,990 sq. mi.	70,909
Hawthorne Class II-A	2,964	8,644

It will be seen that the proposed WGN power increase would be many fold more effective in accomplishing the Commission's stated purpose of serving "white" area at night than with the proposal to assign a Class II-A station to Nevada.

Not only would the WGN power increase result in a substantial improvement in the Type B service rendered at night, but it would also provide a substantial improvement in all types of skywave service (Types D, E and F) rendered by WGN at night. This improvement is illustrated by exhibits previously submitted by Clear Channel Broadcasting Service in this proceeding.

In contrast, the assignment of a 10 kw Class II-A unlimited-time station to Nevada or Idaho on the basis proposed by the Commission would permit WGN to render interference-free service at night only to the 0.5 mv/m 50% skywave contour for the present 50 kw operation, and interference from the Nevada or Idaho assignment would result in progressive degradation of the WGN service beyond the 0.5 mv/m 50% skywave contour. This is illustrated by Figure 3, which shows the WGN 0.5 mv/m 50% skywave contour and interference which would be caused by a typical directional antenna providing only the protection contemplated by the Commission's Order.

Studies have also been made to determine the feasibility of employing a frequency other than 720 kc for 10 kw unlimited-time operation in Nevada or Idaho. These studies show that 660 kc or 830 kc could be used for this purpose in compliance with the criteria employed by the Commission for assigning Class II-A stations to the Class I-A clear channels, in full compliance with the Commission's Technical Standards.

In making the engineering studies reflected in this affidavit, the engineering exhibits already in the record in this docket have been relied on in determining the location of Type B service contours of authorized stations. The Nevada station was assumed to protect WGN in accordance with the requirements of the Commission's Order, and nighttime limitations in Nevada were calculated using the propagation curves\intended for this purpose by the Commission. Groundwave contours for the Nevada station were calculated in the usual manner.

Affiant states that the calculations and exhibits in this report were made by him personally or under his direction and that all facts contained herein are true of his own knowledge except where stated to be on information or belief, and as

[4406]

to those facts, he believes them to be true.

/s/ Howard T. Head
Affiant

[JURAT dated October 16, 1961]

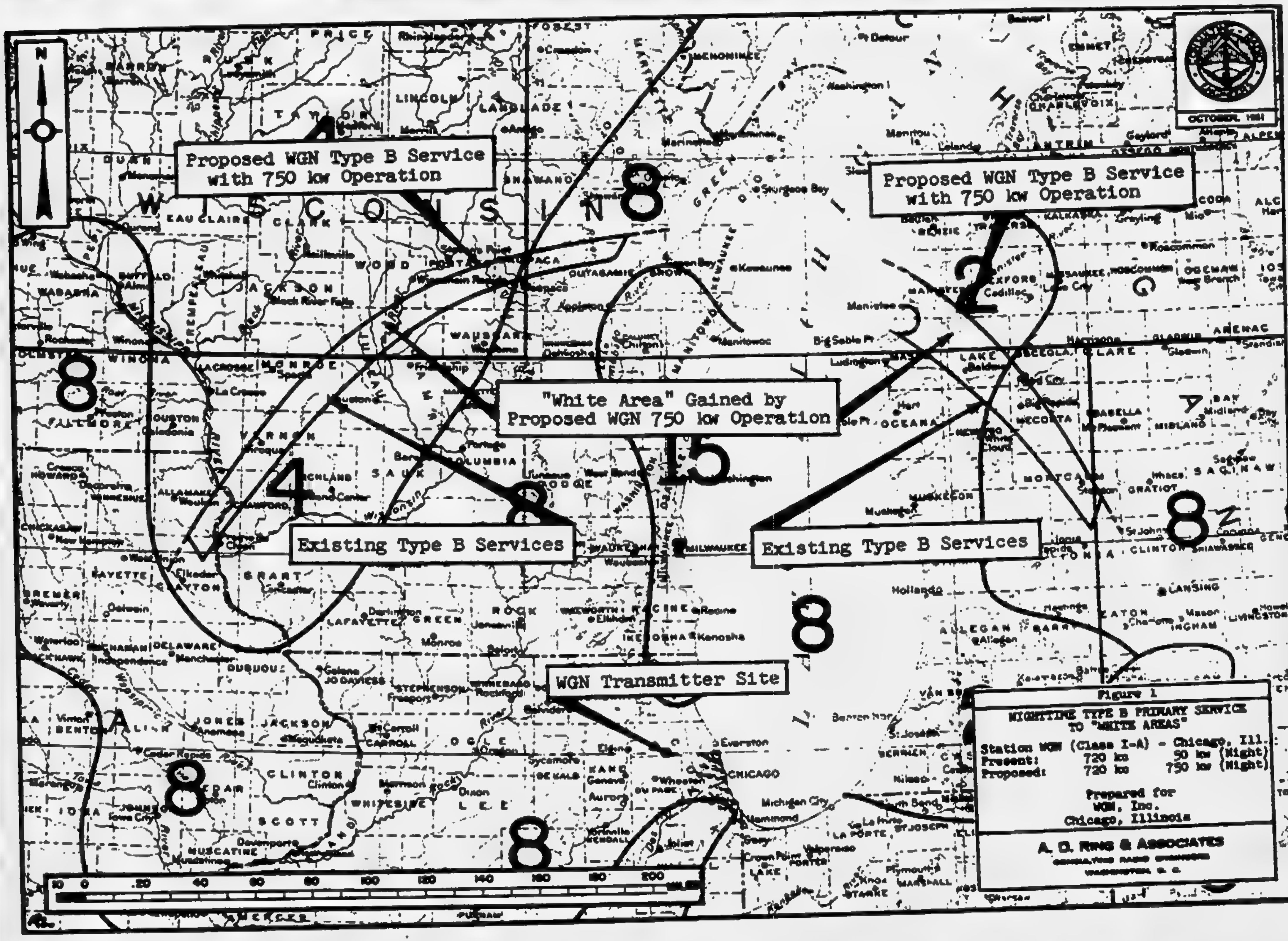

Proposed WGN Type B Service with 750 kw Operation
Proposed WGN Type B Service with 750 kw Operation
"White Area" Gained by Proposed WGN 750 kw Operation
Existing Type B Services
Existing Type B Services
WGN Transmitter Site
WISCONSIN
MICHIGAN
CHICAGO
MILWAUKEE
8
8
8
8
8
8
8
4
4
2
15
OCTOBER, 1961
10 0 20 40 60 80 100 120 140 160 180 200 MILES

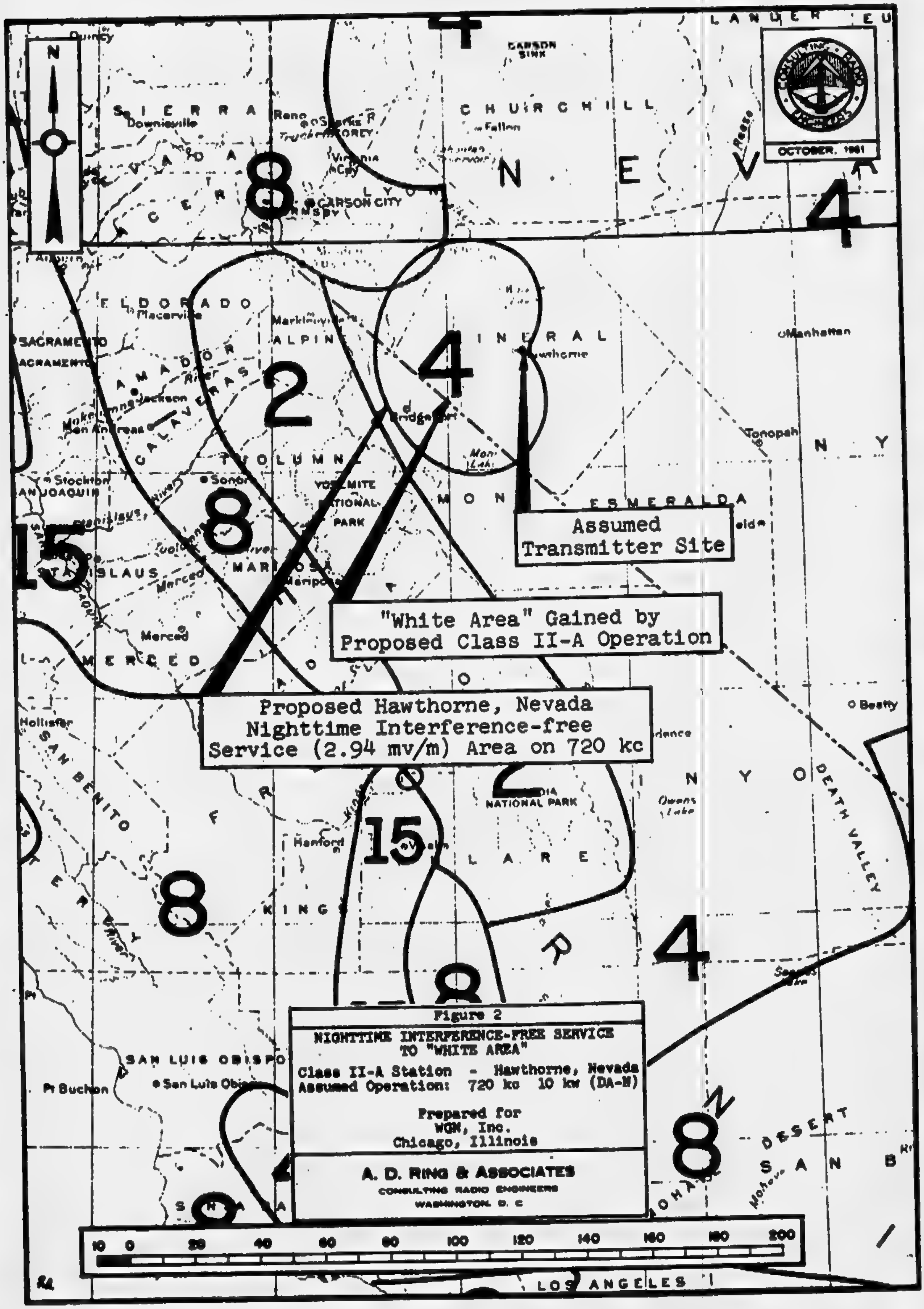
Figure 1

NIGHTTIME TYPE B PRIMARY SERVICE TO "WHITE AREAS"

Station WGN (Class I-A) - Chicago, Ill.:
Present: 720 kc 50 kw (Night)
Proposed: 720 kc 750 kw (Night)

Prepared for
WGN, Inc.
Chicago, Illinois

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.



Assumed Transmitter Site

"White Area" Gained by Proposed Class II-A Operation

Proposed Hawthorne, Nevada Nighttime Interference-free Service (2.94 mv/m) Area on 720 kc

Figure 2

NIGHTTIME INTERFERENCE-FREE SERVICE TO "WHITE AREA"

Class II-A Station - Hawthorne, Nevada
Assumed Operation: 720 kc 10 kw (DA-N)

Prepared for
WGN, Inc.
Chicago, Illinois

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

N
OCTOBER, 1961
SIERRA
NEVADA
PLACER
CHURCHILL
LANDER
CARSON SINK
Reno
Downieville
Fallon
Virginia City
CARSON CITY
LYON
ELDORADO
Placerville
SACRAMENTO
AMADOR
ALPINE
CALAVERAS
Jackson
San Andreas
MINERAL
Hawthorne
Bridgeport
Mono Lake
TUOLUMNE
Stockton
Sonora
SAN JOAQUIN
YOSEMITE NATIONAL PARK
MONO
ESMERALDA
Manhattan
Tonopah
NYE
STANISLAUS
MARIPOSA
Mariposa
Merced
MERCED
Beatty
Hollister
SAN BENITO
FRESNO
INYO
Owens Lake
DEATH VALLEY
SEQUOIA NATIONAL PARK
Hanford
Visalia
TULARE
KINGS
SAN LUIS OBISPO
San Luis Obispo
Pt Buchon
MOJAVE DESERT
SAN BERNARDINO
LOS ANGELES
2
4
8
15
10 0 20 40 60 80 100 120 140 160 180 200

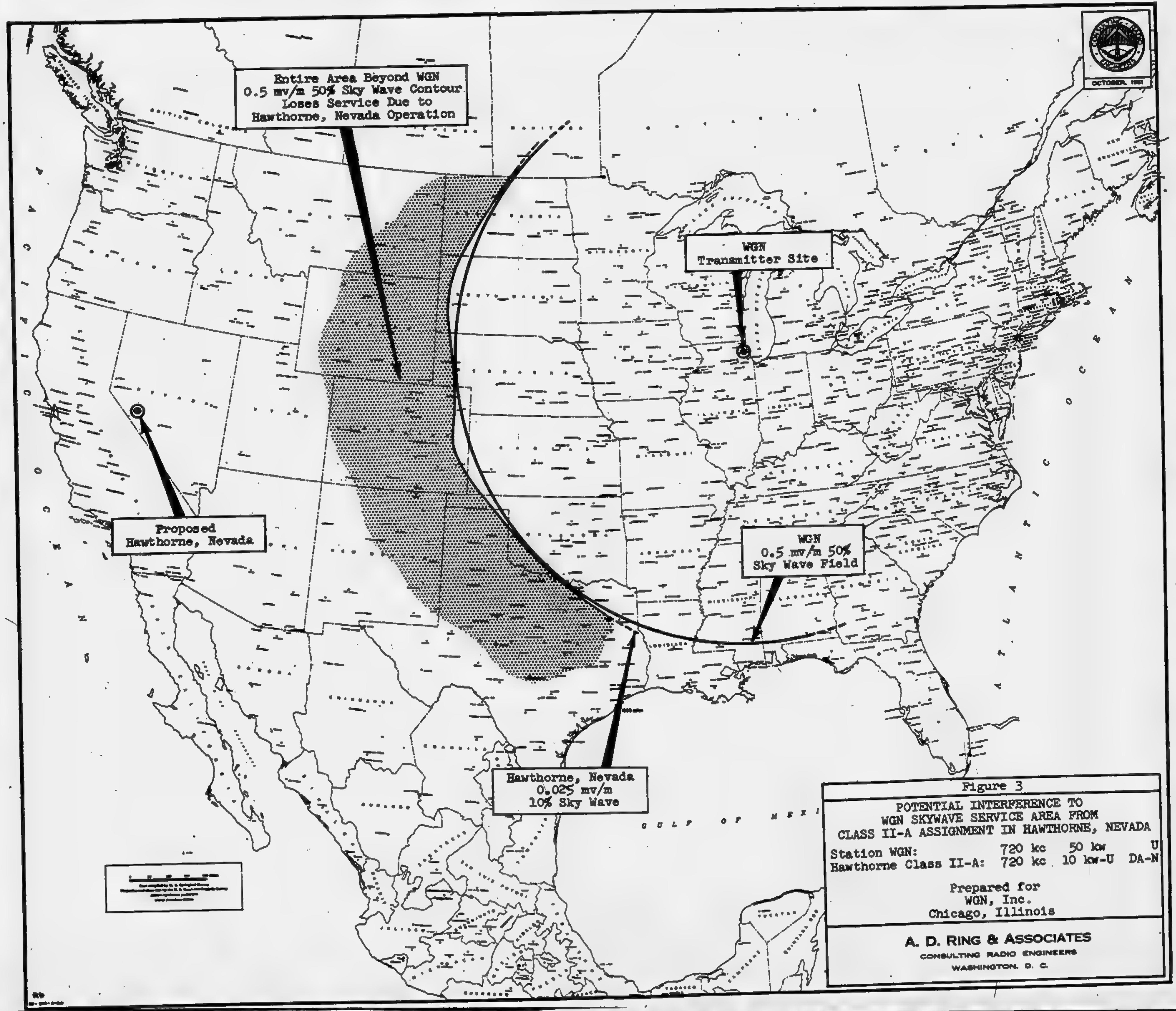

Entire Area Beyond WGN
0.5 mv/m 50% Sky Wave Contour
Loses Service Due to
Hawthorne, Nevada Operation
WGN
Transmitter Site
Proposed
Hawthorne, Nevada
WGN
0.5 mv/m 50%
Sky Wave Field
Hawthorne, Nevada
0.025 mv/m
10% Sky Wave
PACIFIC OCEAN
ATLANTIC OCEAN
GULF OF MEXI
OCTOBER, 1961

Figure 3

POTENTIAL INTERFERENCE TO
WGN SKYWAVE SERVICE AREA FROM
CLASS II-A ASSIGNMENT IN HAWTHORNE, NEVADA

Station WGN:	720 kc	50 kw	U
Hawthorne Class II-A:	720 kc	10 kw-U	DA-N

Prepared for
WGN, Inc.
Chicago, Illinois

A. D. RING & ASSOCIATES
CONSULTING RADIO ENGINEERS
WASHINGTON, D. C.

[4452]

[Rec'd Oct. 16, 1961-FCC]

PETITION FOR RECONSIDERATION

Westinghouse Broadcasting Company, Inc. (hereinafter referred to as "WBC"), by its attorney, John W. Steen, Esq., herewith respectfully petitions the Commission to reconsider its order released September 14, 1961 amending its rules relating to Class I-A channels, re-open the record, and take the actions herein suggested. In respect thereof it is shown as follows:

1. The Commission has concluded that the basic "clear channel problem" can best be resolved by breaking down 13 Class I-A clear channels and preserving the remaining 12 Class I-A in status quo *without*, however, reaching a decision "either for or against the use of high power" (Paragraph 25). WBC respectfully submits that, notwithstanding the Commission's reservation, the alleged "solution" of the clear channel problem in this manner will probably foreclose, for all practical purposes, any future consideration of other, and perhaps more efficient and satisfactory, solutions. Past allocation experiences

[4453]

clearly demonstrate that *partial*, or interim solutions, "cast the die" and foreclose consideration of practical solutions to increasingly serious problems arising in the future. For example, the step-by-step allocation decisions involving VHF channels 1-6, the FM allocations, and VHF channels 7-13 contributed to the difficulties in solving the present VHF-UHF situation.

2. The basic issue in the clear channel problem, service to the sparsely settled white areas, requires a *total* solution *including* a decision on whether or not the use of higher power is an essential element. Any partial solution, including that adopted by the Commission at this docket, may (and WBC on the basis of past experience in other allocation

plans predicts that it will) foreclose an ultimate solution on a practical, satisfactory, and efficient basis. The basic radio allocation plan consisting of a division of the standard broadcast spectrum into clear, regional and local channels, has served the U. S. well since its institution in 1928. The instant decision constitutes an erosion of this tried and tested formula *without* reaching a total conclusion. Only on the basis of the most urgent and immediate demands do we believe that the lesson to be learned from the allocation difficulties now facing other services should be forgotten and the ultimate *total* solution forced into a specific avenue of approach by virtue of a previously adopted "interim or partial" solution.

[4454]

3. For example, the instant partial solution forecloses the Commission, the individual licensees and the affected public from any future consideration of the use of higher power on any of the 13 channels now to be duplicated by new Class II stations. Whether or not such foreclosure constitutes a practical adverse effect on the individual licensees and those segments of the public affected, the Commission proposes not to decide at the present time. That such action *presently* adversely affects their legal rights and restricts their future freedoms, cannot be denied.

4. The "partial solution" adopted in the instant order poses serious legal problems under Section 307(b) of the Communications Act of 1934 as amended. This section places the statutory duty upon the Commission to make "such distribution of licenses, frequencies, hours of operation, and *of power* among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." (emphasis supplied). WBC respectfully submits that the instant decision severely limits, if not completely removes, the Commission's freedom to carry out this Congressional mandate if and when further consideration is given to the use of higher power. If the demand for new Class II stations, anticipated in the instant decision, develops,

vested property rights will remove, for all practical purposes, 13 of the present clear channels from all future consideration on the use of higher power no matter what the public needs may prove to be.

[4455]

5. WBC also urges the Commission to give serious reconsideration to whether or not, in practical operation, the "white" area problem will be solved to any substantial extent by the proposed new Class II-A assignments in light of restrictions imposed upon those assignments: "Prospective applicants in each case can and should be expected to pick locations and design operations which . . ." serve an area which is at least 25% presently "white" with a minimum of 10 kw power. By virtue of financial statistics filed with the Commission on a confidential basis each year, the Commission is in a position to take judicial notice of the general size and nature of a population necessary to economically sustain over a period of years a broadcast operation using 10 kw or more power. Granted that no one expects the Commission to concern itself with the economics of broadcasting on a case-by-case basis since such consideration would be clearly contrary to the intent of Congress. Conversely, however, in the promulgation of a broad allocation plan, the Commission cannot be expected to close its eyes to the economic facts of the broadcasting industry, disregard the public's interest in scarce channels, and make allocations in places where there is no population to sustain their continued use. Therefore, WBC most strongly urges the Commission to reconsider the instant decision to the extent of determining with substantial exactness, the areas of the U. S. within which the new Class II-A stations can be located, meet

[4456]

the 25% "white area" restriction, and still have some reasonable likelihood of continued successful operation by virtue of the size and nature of the population within such area.

6. Assuming, arguendo, that upon reconsideration the Commission finds that there are a sufficient number of areas and populations within which the new Class II-A stations can be located with reasonable promise of successful operation, WBC further suggests that additional consideration be given to whether or not such single assignments (a) are the most efficient use of the spectrum as required by the statute, and (b) will long remain as single assignments or be further broken down by additional assignments in response to additional needs and thus converting these 13 clear channels into the equivalent of regional channels. WBC respectfully submits that such reconsideration and re-study will clearly indicate that this allocation is not, from the long-range, practical viewpoint, the most efficient use of the spectrum and that the WBC proposals submitted at this docket under date of March 25, 1960 will serve more people in more white areas with a new primary service and with a greater likelihood of continued successful financial operations, than the instant decision of the Commission.

Conclusion

Therefore, for the foregoing reasons, WBC urges the Commission to re-open the proceedings at this docket, reconsider its proposed rules, and take the following actions in the following order:

(a) Reconsider and determine now whether or not the use of higher power will be a necessary element of the total solution of the clear channel problem, and, if it finds that it is, the geographical locations and frequencies that shall be used for such higher powered broadcasting;

(b) If the use of high power is found to be in the public interest, allocate the use of higher power on the selected frequencies in a manner equitable among the various states as required by statute, giving due recognition to the rights of the individual licensees of the 25 clear channels and the respective public audiences which they serve;

(c) Reconsider and re-determine whether or not, in light of the authorization for the use of high power, the distribution of such allocations among the several states and the existence of the present clear, regional and local channels, the public interest and public safety requires any duplication of any of the clear channels;

(d) If the Commission, on the basis of such reconsideration, finds that the public interest requires the duplication of some of the clear channels, the method, manner and location of the additional stations that would constitute (1) the most efficient use of the spectrum, and (2) the locations and the authorized powers of operation where the nature and size of the populations give reasonable promise of economic support necessary to justify applications, construction, and continued operation of the new stations in the public interest.

[4458]

Respectfully submitted,
WESTINGHOUSE BROADCASTING
COMPANY, INC.

By /s/ John W. Steen,
Counsel

October 16, 1961
40 Wall Street
New York 5, New York

[4636]

[Rec'd Oct. 26, 1961-FCC]

OPPOSITION TO PETITIONS FOR RECONSIDERATION

1. Marietta Broadcasting, Inc. ("Marietta"), licensee of standard broadcast station KFMB, San Diego, California, opposes the Petitions for Reconsideration filed herein by The Goodwill Stations, Inc. ("WJR"), Clear Channel Broadcasting Service ("CCBS"), Genesee Broadcasting Corporation, WGN, Inc., Earle C. Anthony, Inc., Westinghouse Broadcasting Company, Inc., Columbia Broadcasting System, Inc., and Atlanta Newspapers, Inc., to the extent that the Commission is asked therein to reconsider the disposition of the frequency 760 kc made in its Report and Order herein.[1]

2. WJR bases its request for reconsideration of the Commission's Order herein on the proposition that the Commission should authorize operation by Class I-A stations at powers in excess of the present authorized maximum of 50 kw, thus providing, in its view, a more satisfactory solution of the problem of furnishing service to "white areas" than the solution adopted by the Commission. CCBS's Petition is in substance a more extensive reargument of the same point. The Petitions of the other parties above named are fundamentally similar to those of WJR and of CCBS, dealing particularly with specific frequencies on which those stations hold Class I-A licenses.

[4637]

3. However valid or invalid the general proposition may be that an overall "white area" problem would be better met by the increase in power

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[1] The CBS Petition, filed October 20, 1961, also requests stay of the Commission's Order. Since this request is not made in a separate pleading under §§ 1.12(a) and (b) of the Rules, it is entitled to no consideration. In any event, as Marietta pointed out in its Opposition to Motion for Stay, filed October 23, 1961, whether or not stay of the general provisions of the Order is appropriate, stay of the aspects thereof dealing with 760 kc is not.

of existing stations than by the licensing of new stations, the Commission's disposition of 760 kc is subject to special considerations inapplicable to the majority of channels affected by the Order. The Commission repeatedly emphasized, and WJR concedes, that the Commission's disposition of 760 kc was made to solve a unique problem. Hence, however appropriate it might be for the Commission to reconsider the overall policy choice between duplication on the one hand and increased power on the other, the special circumstances under which the Commission made provision for 760 kc render it inappropriate that that provision be reconsidered as well.

4. In any event, the Commission gave full consideration to its disposition both of the overall policy problem and of 760 kc. All interested parties had full opportunity to comment with respect to the disposition of 760 kc that was in fact made. The Commission reached its conclusion in this matter in the light of full information as to all relevant facts, and after giving careful consideration to all proposals and counter-proposals. In the Petitions for Reconsideration no significant new matter is alleged that was not before the Commission in arriving at its decision. As a practical matter, operation of KFMB as proposed would have no significant adverse impact on WJR. Reconsideration of the Commission's disposition of 760 kc is therefore unwarranted.

I. THE COMMISSION'S DISPOSITION OF 760 KC WAS MADE IN THE LIGHT OF SPECIAL AND COMPELLING CIRCUMSTANCES.

5. The Commission's disposition of 760 kc was made to provide a channel for KFMB, the only station in the 48 adjoint states forced to vacate its frequency as a result of the United States-Mexican broadcasting agreement, which went into effect in early 1961. In its Report the Commission was repeatedly explicit that this was the purpose intended to be served by its assignment of a Class II-B 5 kw station to San Diego on 760 kc. This assignment, the Commission observed, was made "in a way designed to meet

special situations arising out of the entry into force of the United States-Mexican Broadcasting agreement,"[1] to meet the unique problem "of finding a suitable frequency on which the service heretofore provided by KFMB at San Diego may continue to be rendered."[2] The Commission repeatedly made it clear that, as WJR concedes,[3] the Commission's disposition of 760 kc was made "not . . . to solve the main issues of the clear channel proceeding but for this special limited purpose."[4]

6. The aspects of the Commission's Order dealing with 760 kc are thus subject to considerations that do not apply to the main body of the Order. They deal with a very rare situation such as has come before the Commission only a handful of times in its history. Whatever considerations might militate for or against the reconsideration by the Commission of its overall policy with respect to the choice between duplication of the I-A channels or the increasing of the power of Class I-A stations as a means of expanding service to "white areas" clearly do not apply to the special case of 760 kc, subject as it is to unique considerations involving the international obligations of the United States.

II. THE COMMISSION HAS FULLY CONSIDERED ALL FACTORS RELEVANT TO ITS DISPOSITION OF 760 KC, AND NO GROUNDS JUSTIFYING A RECONSIDERATION THEREOF HAVE BEEN ADVANCED.

7. Few administrative proceedings have considered a policy question so much at length and in such exhaustive detail as this proceeding has considered the appropriate disposition of the Class I-A channels. The proceeding was initiated more than sixteen years ago. Extensive hearings were held, with oral argument, more than thirteen years ago. The Further Notice of 1958, and the Third Notice of 1959, reactivated the proceeding

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[1] Report, para. 35.

[2] *Id.*, para. 78.

[3] WJR's Petition, para. 3.

[4] Report, para. 3.

and elicited a host of comments which thoroughly explored all aspects of the questions involved. The fundamental policy question of duplication of the Class I-A channels versus increase in power of existing I-A stations has been debated from the beginning: CCBS offered its "20 station plan" as far back as 1948. It and individual protagonists of the increased-power concept have repeatedly and exhaustively presented their case. The Commission reached its conclusions in the light of this full presentation. No useful purpose would be served by Commission reconsideration of these questions.

8. Similarly, the question whether the unique problem of KFMB should be solved by making available to it one of the Class I-A frequencies, and the further question which frequency should be so made available, has been fully canvassed already. Wrather-Alvarez Broadcasting, Inc., a predecessor licensee of KFMB, filed comments in 1959 in response to the Further Notice suggesting that 760 kc be made available to KFMB. Again in 1960, in response to the Third Notice, Marietta filed comments suggesting 760 kc as a satisfactory frequency for the solution of its problem. Other interested parties similarly filed comments and reply comments which thoroughly explored that proposal and alternative proposals. CCBS avers that the Commission gives "no rational reasons" for its conclusion that 760 kc offers the best solution for the problem posed by the impact of the Mexican agreement on KFMB.[1] But the Commission was careful to note the factors considered by it in reaching this conclusion. It explicitly stated that it had "given consideration to all comments relating to KFMB's request for shift to 760 kc or other frequency, and to possible alternative solutions" -- specifically including comments of WJR.[2] Its conclusion was based on a "painstakingly careful review of all the availabilities,"[3] a "painstaking

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[1] CCBS Petition for Reconsideration, para. 83.

[2] Report, para. 79.

[3] *Id.*, para. 81.

balancing of all pertinent considerations,"[1] which took into account requirements of protection to Mexican channels, availabilities of other Class I-A channels for Class II-A stations elsewhere, domestic and Canadian co-channel and adjacent-channel limitations on individual Class I-A allocations, and related considerations.[2] It noted the interest of another party in a Class II-A operation in San Diego, the possibility of interest of other parties in 760 kc at San Diego, and the necessity of a waiver of § 3.37 of the Rules as to a station on 740 kc in Avalon, California.[3] In short, the Commission clearly gave exhaustive consideration to all aspects of its decision to assign 760 kc to San Diego for use by KFMB, and no useful purpose would be served by reconsideration of that decision.

9. WJR presents no new evidence to justify reopening of this decision. Indeed, its only suggestion of any such new matter is in connection with its conditional request for evidentiary hearing, which is expressly contingent on denial by the Commission of its Petition for Rehearing: WJR tentatively suggests that "there appear to be some technical possibilities of operation on 1000 kc."[4] But, as is brought out in detail in the attached Engineering Statement, the frequency 1000 kc would be wholly unsatisfactory as an equitable solution of the problem faced by KFMB.[5] Use of 1000 kc by KFMB would require not one but two waivers of § 3.37 of the Rules, for a 2 mv/m and 25 mv/m overlap would be presented between KFMB and both KGBS, Los Angeles, and KFWB, Los Angeles. Several co-channel stations both in California and in Mexico would create interference to KFMB. Night operation on 1000 kc would be unfeasible because of stations KOMO, Seattle, and XEOY, Mexico City; KFMB's nighttime

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[1] Id., para. 81.

[2] Id., para. 78.

[3] Id., para. 79.

[4] Engineering Statement attached to WJR's Petition for Reconsideration, p. 4.

[5] Engineering Statement, pp. 2-3.

limitation would be 12.0 mv/m, and the necessity of protecting KOMO, a Class I-B station, would practically eliminate service north of KFMB's transmitter. In short, 1000 kc would manifestly be wholly unsatisfactory as a substitute for KFMB's present operation. And in any event, WJR had full opportunity to urge the use of 1000 kc at the appropriate stage of the proceeding. The Commission should not reopen this record now in order to consider the suggestion at this late date.

10. Finally, it should be pointed out that in fact WJR's grievance is nominal. It is very doubtful as a practical matter that operation by KFMB in accordance with the Report and Order would cause any loss of significant service to WJR. Operation of KFMB in accordance with the Report and Order would more than protect WJR's o.5 mv/m 50% skywave contour.[1] As the attached Engineering Statement points out, while groundwave signals less than 0.5 mv/m are sometimes useful, the intermittent service of the skywave means that as a practical matter greater signal strength is needed to provide significant service.[2] In fact, taking Type F service pursuant to Exhibit 109 as a standard,[3] the limits of that service for WJR fall generally some 200 miles short of the 0.5 mv/m 50% skywave contour which KFMB would more than protect.[4] WJR has itself offered evidence of only the most isolated instances of actual listener response beyond its 0.5 mv/m 50% skywave contour: during a four-month period, it received mail -- perhaps only one letter -- from each of three widely separated counties in the entire vast area west of that contour.[5] Even WJR's thesis that operation of KFMB in accordance with the Report and Order would preclude its providing increased

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[1] Engineering Statement, p. 1.

[2] Ibid.

[3] The Commission has more than once recognized Exhibit 109 as "the most comprehensive and realistic tool yet devised for the evaluation of standard broadcast service." Report, para. 49.

[4] Engineering Statement, p. 2.

[5] Ibid.

[4642]

service to white areas in northern Michigan is untenable. As the attached Engineering Statement makes clear, if increased power for WJR were authorized in the future it would be able to provide such service to northern Michigan while still protecting KFMB's operation by the use of a suitable directional antenna.[1] In short, the impact on WJR of operation by KFMB in accordance with the Report and Order would be insubstantial and does not warrant reconsideration by the Commission of its disposition of 760 kc.

WHEREFORE, the Petitions for Reconsideration filed on behalf of the parties aforesaid, and all other such petitions, should be denied at least to the extent they seek reconsideration of the Commission's disposition of 760 kc.

Respectfully submitted,

MARIETTA BROADCASTING, INC.

By /s/ Ernest W. Jennes

By /s/ Thaddeus Holt
Covington & Burling
701 Union Trust Building
Washington 5, D. C.

Attorneys for
Marietta Broadcasting, Inc.

October 26, 1961

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[1] Engineering Statement, p. 2.

[4643]

[Certificate of Service]

[4644]

MARIETTA BROADCASTING, INC.
RADIO STATION KFMB
SAN DIEGO, CALIFORNIA

ENGINEERING STATEMENT OF ROBERT L. HAMMETT, CONSULTING RADIO ENGINEER

The firm of Hammett & Edison, Consulting Radio Engineers, has been retained by Marietta Broadcasting, Inc., licensee of Radio Station KFMB, San Diego, California, to make engineering studies of the Petition for Reconsideration and Conditional Request for Evidentiary Hearing, dated October 16, 1961, filed by The Goodwill Stations, Inc., licensee of Station WJR, Detroit, Michigan.

The Federal Communications Commission, in its Report and Order adopted September 13, 1961 in Docket No. 6741, assigned the 760 kc channel for use by Station KFMB in San Diego as a replacement for the 540 kc channel which must be vacated by KFMB in accordance with the 1957 agreement between the United States and Mexico. Radio Station KFMB is prepared to make the necessary construction to change frequency and this firm has been retained to design an appropriate directional antenna system to provide complete protection to the existing primary groundwave and secondary skywave service areas of Station WJR.

In its Petition, WJR alleged that it would lose existing secondary skywave nighttime service in rural areas as a result of interference caused by the proposed 760 kc operation of Station KFMB. Engineering studies which I have made show that this would not be the case. It is readily possible to design and install a directional antenna for Station KFMB which would provide complete protection to the existing 0.5 mv/m 50% time nighttime secondary skywave coverage of Station WJR, as defined by the Rules of the Federal Communications Commission. The proposed 0.025 mv/m 10% time skywave contour of KFMB would be located west and south of the WJR secondary service area.

Figure 2 of the engineering statment, dated October 16, accompanying the WJR Petition purports to show the interference to the WJR skywave service area from KFMB. The map of Figure 2 is not sufficient to show any loss of service since it does not establish any region outside the 0.5 mv/m 50% time contour to which service is now given by WJR in the absence of interference from KFMB. The shaded area on Figure 2 has an undefined western boundary and an incorrectly shown eastern boundary, the 0.025 mv/m 10% time skywave contour not being significant for computing interference outside the 0.5 mv/m 50% time skywave contour. It should be emphasized that the alleged loss is outside the WJR secondary service area as computed by any recognized procedure.

In my opinion, there now exists no significant service by WJR outside its 0.5 mv/m 50% time skywave contour; there can, therefore, be no loss of service where none exists. Groundwave signals with an intensity less than 0.5 mv/m are useful in some areas during daytime hours in the absence of atomospheric noise, interference, and objectionable fading. However, the intermittent reception associated with skywave propagation requires higher median field intensities to produce satisfactory service at night. These facts are recognized in Section 3.182 of the FCC Rules.

The more refined methods for predicting service areas set forth in Exhibit 109 of Docket No. 6741 indicate that the secondary service area of WJR is not even as extensive as the 0.5 mv/m 50% time skywave contour would indicate. Type F service is the largest of the three types of skywave service defined in Exhibit 109, and in my

opinion, is a reasonable representation of the maximum usable secondary service area of Station WJR. It is noted that the recent filings by WJR employ Exhibit 109 in computations of nighttime skywave service area, as do the filings of the Clear Channel Broadcasting Service to which WJR subscribes. Studies which I have made show that the Type F service area of WJR generally falls short of the 0.5 mv/m 50% time contour by approximately 200 miles. The proposed operation of Station KFMB would not cause any reduction in the existing Type F service of WJR.

In support of its claim that existing service from WJR would be lost by the operation of KFMB on the 760 kc channel, WJR refers to Exhibit 11 in the Clear Channel Broadcasting Service comments of August 15, 1958. An examination which I have made of Exhibit 11 shows that it is a map on which certain counties have been blacked in on the basis of mail received by WJR. Although Exhibit 11 does not show the 0.5 mv/m 50% skywave contour of WJR, superimposing this contour on the map shows that mail was received, during the four-month period under consideration, from only three counties west of the 0.5 mv/m contour. These counties are Tulsa in Oklahoma, El Paso in Colorado, and Chaves in New Mexico. The cities of Tulsa, Colorado Springs, and Roswell are located in these counties, respectively, so it can be seen that isolated rural areas are not necessarily involved. Furthermore it is possible, and quite likely, that only a single letter was received during the four-month period from each of these counties. It is therefore my conclusion that WJR has not demonstrated any substantial listening audience outside of its 0.5 mv/m 50% time skywave contour.

The WJR Petition showed that, in the event it were permitted to operate with 750 kw, Type B groundwave service would be given to an existing "white area" in northern Michigan. WJR asserted that protection against co-channel interference would have to be provided in order for such service to be rendered. Studies which I have made of the "white area" coverage shown by Figure 1 of the WJR Petition, indicate that the Type B service of WJR would be limited by atmospheric noise and interference from other existing stations. Specifically at the point located at North Latitude 43° 58' 00" West Longitude 86° 00' 00", the skywave field intensity from KFMB, operating with a directional antenna designed to protect the existing WJR 0.5 mv/m 50% time skywave contour, would be only 0.00353 mv/m 50% time as computed in accordance with Exhibit 109. This would limit WJR only to the 0.13 mv/m contour. In this region the limitation due to atmospheric noise alone is 0.30 mv/m. It should further be noted that the use of a directional antenna at 750 kw by WJR would permit greater service to the Northern Michigan area than shown in WJR Figure 1, while at the same time avoiding any increased interference to KFMB above that which would be caused by the existing operation of WJR.

In its Petition, WJR alleges that there are available for KFMB other frequencies which are as well suited as 760 kc. WJR suggests only two frequencies, 830 kc and 1000 kc. The first of these has previously received extensive study, the results of which are set forth in my engineering exhibit dated March 28, 1960 in this Docket, which was considered by the FCC. Studies which I have made show that it would not be possible for Station KFMB to operate on the 1000 kc channel to provide service in any way as extensive as that on the 760 kc channel. As noted by WJR, the use of the 1000 kc channel by KFMB would cause an overlap of 25 and 2 mv/m contours with Station KGBS, 1020 kc, Los Angeles, California. There would also be created an overlap, which was not mentioned by WJR, of 25 and 2 mv/m contours with Station KFWB, 980 kc, Los Angeles, California. The measurements submitted by this firm on November 20, 1959 in Docket No. 12813 confirm the existence of 2.0 mv/m service from KFWB in portions of the city of San Diego. Other stations which would cause daytime loss to KFMB on the 1000 kc channel or a

[4646]

limitation of potential coverage are Station KCHV, Coachella, XECL, Mexicali, and KCMJ, Palm Springs. Nighttime operation of KFMB on the 1000 kc channel would not be feasible in my opinion because of the extremely high nighttime limitation resulting from interference caused by Station KOMO, 1000 kc, 50 kw DA-N, Seattle, Washington, and XEOY, 1000 kc, 50 kw, Mexico, D.F. As a result of such interference, the KFMB nighttime service would be limited to the 12.0 mv/m contour. For this reason alone, the nighttime service would be much smaller than on the 760 kc channel which is limited only to the 1.96 mv/m contour. Furthermore, it would be necessary to protect the existing nighttime secondary service area of Station KOMO which reaches to a point about 230 miles north of San Diego. The extremely critical directional antenna required to protect KOMO would prevent KFMB from having any significant service north of its transmitter site. The restrictions on the use of 1000 kc in San Diego would yield a service area limited to the north by the directional antenna, to the west by the Pacific Ocean, and to the south by the Mexican border. Very little usable service would result and it is my conclusion that the 1000 kc channel would not be an acceptable solution to the KFMB problem.

HAMMETT & EDISON
Consulting Radio Engineers
/s/ Robert L. Hammett

October 24, 1961

[4647]

AFFIDAVIT

State of California)
) ss:
County of San Mateo)

Robert L. Hammett, being first duly sworn upon oath, deposes and says:

1. That he is a qualified engineer and a partner in the firm of Hammett & Edison, Consulting Radio Engineers, with offices located near the city of San Francisco, California,

2. That he graduated from Stanford University in 1942, received a Master of Arts Degree in Electrical Engineering from Stanford

University in 1943, was a Research Associate at Radio Research Laboratory, Harvard University from 1943 through 1945, was a partner in the firm of A. Earl Cullum, Jr., Consulting Radio Engineers, Dallas, Texas, from 1946 through 1951, and has carried out a consulting practice in San Francisco since 1952,

3. That the firm of Hammett & Edison, Consulting Radio Engineers, has been retained by Marietta Broadcasting, Inc., licensee of Radio Station KFMB, San Diego, California, to make engineering studies of the Petition for Reconsideration and Conditional Request for Evidentiary Hearing, dated October 16, 1961, filed by The Goodwill Stations, Inc., licensee of Station WJR, Detroit, Michigan,

4. That he has carried out such engineering work and that the results thereof are attached hereto and form a part of this affidavit, and

5. That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge except such statements therein made on information and belief, and as to such statements, he believes them to be true.

/s/ Robert L. Hammett

[JURAT the 24th day of October, 1961.] [Notarial Seal]

[4676]

B
FCC 61-1293
11534

SUPPLEMENT TO REPORT AND ORDER

By the Commission: Commissioners Lee and Cross absent.

1. The Commission, on September 14, 1961, released its Report and Order in the above-captioned Docket concluding the clear channel proceeding. Many inquiries have been received from applicants for new stations on frequencies adjacent (i.e., within 30 kc) to one of the 12 Class I-A clear channels presently held in status quo. The Commission, on its

own motion, has reconsidered the portion of the Report and Order (paragraphs 63-65) dealing with the "freeze" on such applications.[1]

2. We have determined that the over-all objectives of the clear channel decision and the public interest considerations therein involved can be better served by certain modifications with regard to the treatment of applications for frequencies within 30 kc of one of the 12 unduplicated Class I-A clear channels. In recognition of the equities and public benefits involved in processing applications for new stations on, or change of frequency to, one of those frequencies, and in an effort to simplify for all concerned the processing of such applications as will not hinder our future freedom of action with regard to the unduplicated clear channels, the Commission is amending its Rules to accomplish the following: As to the 12 clear channels on which decision has been deferred -- beginning October 30, 1961, applications will not be accepted for new stations on, for change of frequency to, or to increase power or operate during nighttime hours not previously authorized on a frequency within 30 kc of one of these 12 Class I-A frequencies. Applications for such facilities filed prior to October 30, 1961 will be studied in the light of their likely impact upon the possible future use of the unduplicated clear channels. From such study, it is contemplated that more precise engineering criteria might evolve which can then be applied in acting upon those applications now pending and announced as standards to govern the acceptance of future applications on these adjacent frequencies. This moratorium on applications does not apply where the facilities requested are in Hawaii, Alaska, Puerto Rico or the Virgin Islands. Applications for other types of changes in facilities on these adjacent frequencies will be processed and acted upon in normal course.

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[1] The Commission has not yet had an opportunity to consider the numerous petitions for reconsideration filed in this Docket but will do so at a later date.

[4677]

3. The Commission adheres to its announced purpose of preserving freedom of action to determine the future use of the 12 Class I-A unduplicated clear channels. At the same time, the action taken herein looks to the development of standards and procedures designed to minimize the impact of this decision upon the near-term use of the adjacent channels.

4. Accordingly, we are amending Sections 1.351(b) and (c) to incorporate the changes discussed above.

5. Authority for adoption of the rule changes herein is contained in Sections 4(i) and (j), 303, and 307(b) of the Communications Act of 1934, as amended. Section 4(a) of the Administrative Procedure Act exempts from the requirement of publication of general notice of proposed rule making "rules of agency organization, procedure, or practice". Because the rule changes herein are procedural, notice and public procedure thereon are unnecessary. Similarly, the effective date provision of Section 4(c) of that Act applies only to substantive rules. (See also Sections 1.211(a) and 1.219(b) of our Rules.) The other rules changes occasioned by the clear channel decision are to be effective October 30, 1961 and making the changes herein effective that same date will avoid confusion and the possibility of an interim period governed by different procedural rules. We find, therefore, that the public interest will be served by making the rules changes herein effective October 30, 1961.

6. In view of the foregoing, IT IS ORDERED this 27th day of October 1961, That the introductory paragraph of Section 1.351 and Sections 1.351(b) and (c) of the Commission's Rules ARE FURTHER AMENDED as set forth in the Appendix hereto effective October 30, 1961.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Attachment

Released: November 1, 1961

NOTE: Rules changes herein will be covered by T.S. I-14.

APPENDIX

In § 1.351, the introductory text and paragraph (b) are amended to read as set forth below and paragraph (c) is deleted:

§ 1.351 Applications for frequencies adjacent to Class I-A channels.

Notwithstanding the provisions of any other rules of the Commission, all applications (regardless of when they were or may be filed) for frequencies located within 30 kc of a Class I-A channel listed in § 3.25(a) of this chapter will be subject to the provisions of this section. The provisions of paragraph (a) of this section apply to the frequencies listed therein, which are within 30 kc of a Class I-A channel on which an unlimited time Class II assignment is specifically provided for in § 3.22 or 3.25(a) of this chapter. The provisions of paragraph (b) of this section apply to the frequencies listed in paragraph (b) of this section, which are within 30 kc of the remaining Class I-A channels. Where a frequency is listed both in paragraphs (a) and (b) of this section, applications for facilities on such frequency are subject to the provisions and restrictions contained in both of said paragraphs.

* * * * *

(b)(1) Until September 1, 1964, or such earlier date as may be announced, the provisions of this paragraph will apply to all applications for the following frequencies:

610, 620, 630, 680, 690, 710, 730, 790, 800, 810, 850, 860, 900, 1010, 1050, 1060, 1070, 1130, 1140, 1150, 1170, 1190 and 1220 kc.

(2) Applications will not be accepted on or after October 30, 1961 for new stations on, change of existing stations to, or for increase in power or operation during nighttime hours not previously authorized on, one of the designated frequencies.

(3) Applications of the type described in subparagraph (2) of this paragraph filed before October 30, 1961 will be studied in the light of the effect that grant thereof might have upon possible future uses of the Class I-A channel or channels located within 30 kc of the frequency involved (e.g., authorization of power greater than 50 kw for Class I-A stations, or additional unlimited time co-channel assignments). Processing rules will be adopted upon conclusion of such study.

(4) Applications for other changes in facilities on the designated frequencies will be processed and acted upon in normal course.

(5) Action will not be withheld under this paragraph on applications for facilities in Alaska, Hawaii, Puerto Rico, or the Virgin Islands.

[4679]

[Rec'd Nov. 6, 1961, FCC]

Excerpts From Response of CCBS to Pleadings filed in Response to Report and Order Released September 14, 1961

Clear Channel Broadcasting Service (CCBS), by its attorneys, hereby files its response to the pleadings filed in response to the Commission's Report and Order released on September 14, 1961.[1/]

I. Summary of Pleadings Filed

1. As set forth in Appendix A hereof, 22 petitions for reconsideration were filed in response to the Commission's Report and Order released herein on September 14, 1961. Some of the 22 petitions for reconsideration included stay requests. In addition, separate stay petitions were filed by CCBS and the licensee of WCCO, Minneapolis.

2. Excluding the 6 petitions for reconsideration filed

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[1] By an Order released October 30, 1961, the Commission extended the time for filing to November 6, 1961 (Public Notice B-12221).

* * * * *

[4688]

rehearing filed October 16, 1961, any such duplication of a Class I-A frequency will not improve service to white areas and will prohibit the only feasible solution of the white area problem, namely authorizing each of the Class I-A stations to operate with power in excess of 50 kw.

17. For the same reasons, CCBS opposes the petition of the licensee of KXL, Portland, Oregon, which asserts that KXL should be authorized to operate fulltime on 750 kc. In this connection, the opposition to the KXL petition filed herein on October 26, 1961 by the licensee of WSB, Atlanta, Georgia is hereby incorporated herein by reference.

VI. Petition Filed by the Licensee of KBIG, Avalon, California

18. CCBS has no objection to and supports that portion of the KBIG petition which urges that 760 kc should not be assigned to KFMB in view of the violation of Rule 3.37 which would be involved. However, for the reasons given above in paragraph 16, CCBS opposes that part of the KBIG petition which urges that 830 kc should be assigned to it if 760 kc is assigned to KFMB. Neither 760 kc nor 830 kc should be broken down unless and until each is authorized to operate with power in excess of 50 kw.

* * * * *

[4697]

[Rec'd Nov. 6, 1961-FCC]

OPPOSITION TO PETITION FOR RECONSIDERATION AND REHEARING

Midwest Radio-Television, Inc., licensee of Station WCCO, Minneapolis, Minnesota, a party to the above-entitled proceeding, by its attorneys, hereby submits its Opposition to the Petition for Reconsideration and Rehearing filed herein on October 20, 1961, by John Poole Broadcasting Co., Inc. (KBIG). In support thereof, it is respectfully shown as follows:

I. Background

1. Midwest Radio-Television, Inc. is the licensee of station WCCO, a Class I-A station operation on 830 kc in Minneapolis, Minnesota. As the "dominant station" on 830 kc, WCCO is the only station in the country regularly licensed to operate thereon during nighttime hours.

2. In its Report and Order released in the instant Clear Channel proceeding on September 14, 1961, the Commission concluded that new unlimited time Class II-A stations should be permitted on certain of the Class I-A channels, but not including 830 kc. As for the Class I-A channels such as 830 kc not being broken down at this time, the Commission stated:

[4698]

> "We thus leave open and unprejudiced the question of whether, and if so how, the public interest would be served by changing the rules affecting the use of the 12 Class I-A channels [including 830 kc] now left in status quo. At such time as further developments, including progress under the changes we now adopt, provide needed additional light on the question we will give further consideration to how best to utilize the 12 clear channels not now disturbed" (Report, Par. 21).

3. Station KFMB has been operating on 540 kc in San Diego, California. However, pursuant to the recent United States-Mexican Broadcasting Agreement, the Government of Mexico has been accorded a Class I-A priority on this channel. Thus, the Commission was presented with the problem of providing a suitable replacement frequency for KFMB in order that it might continue to render its service to the San Diego community. The Commission proposes in the Clear Channel Report to resolve this special problem arising from the entry into force of the above Agreement by permitting KFMB to employ the Class I-A frequency 760 kc. In deciding on this particular frequency, the Commission explained that:

> "A painstaking careful review of all the availabilities persuades us that 760 kc is the preferable choice, taking into account requirements of protection to Mexican stations on other Class I-A channels, the availabilities of some other places in the United States, domestic and Canadian co-channel and adjacent channel limitations on the allocation of individual Class I-A clear channels, and related considerations. We accordingly herein assign 760 kc for use for a Class II unlimited time operation at San Diego" (Report, Par. 78).

The Commission further stated that, in reaching the decision to employ 760 kc in San Diego, it was fully aware:

[4699]

> "That an authorization under this rule [for 760 kc in San Diego] will require waiver of Section 3.37 of our rules because of a 2 mv/m and 25 m/m overlap with Station KBIG, Avalon, California (740 kc)."

4. John Poole Broadcasting Co., Inc. is licensed to operation station KBIG on 740 kc with 10 kw power, daytime only, at Avalon, Catalina Island, California. And, as noted above, the Commission stated in its Clear Channel Report, that in concluding that station KFMB in San Diego

should be switched to 760 kc, it was fully aware that such allocation would require a waiver of the Rules pertaining to 2 mv/m and 25 mv/m overlap with station KBIG. In its Petition for Reconsideration and Rehearing, KBIG nevertheless argues that the Commission erred in failing either to shift station KFMB to 830 kc instead of 760 kc, or to shift station KBIG to 830 kc. As will be shown, there is no merit to KBIG's Petition and it should be summarily rejected.

II. KBIG's Petition Sets Forth Nothing New.

5. An examination of KBIG's pleading reveals that it is simply a warmed-over version of the selfsame contentions already presented to the Commission by KBIG in the Clear Channel proceeding. These contentions were carefully considered but were rejected by the Commission. KBIG's pleading itself concedes that its reply comments, submitted in the Clear Channel case on June 1, 1960, advanced the very same allegations now rehashed in its Petition for Reconsideration and Rehearing -- namely,

that operation by KFMB on 760 kc in San Diego would create a problem for KBIG on adjacent channel 740 kc in Avalon. Indeed, a good portion of KBIG's petition is devoted simply to a recapitulation of its prior comments. Thus, KBIG has enjoyed a full and complete opportunity to present its views to the Commission in this proceeding and in fact did so. And the contentions which it submitted to the Commission -- now repeated in its latest pleading -- received full and careful consideration by the Commission. In short, in its instant pleading, KBIG has presented no new or additional facts or evidence which would warrant reconsideration or rehearing of the Commission's action earmarking 760 kc for station KFMB in San Diego.

III. In Any Event, There is No Merit in KBIG's Request.

6. Aside from the foregoing, there is no merit to KBIG's suggestions that KFMB be switched to 830 kc in place of 760 kc. WCCO has already demonstrated, in its comments and reply comments submitted in this proceeding, that duplication of Class I-A channel 830 kc in California, or elsewhere, would seriously disserve the public interest. The contentions presented in those documents established beyond question that WCCO should remain the only full-time station on 830 kc. Accordingly, to the extent that KBIG suggests that KFMB should be switched to 830 kc, there is no merit to its request and it should be denied.

[4701]

IV. KBIG's Alternate Request That It Be Switched to 830 kc Is Untimely.

7. As noted above KBIG requests, in the alternative, that in the event KFMB employes 760 kc in San Diego, KBIG should then be shifted to 830 kc. This request, however, comes far too late for consideration in this case. KBIG had full opportunity to present comments and reply comments in this proceeding; nevertheless, it failed to present this latest proposal in a timely filing. Such a basic proposal made at this juncture in the case, long after the date for filing comments, and after the Commission's Decision is announced, is not entitled to consideration in this proceeding and should be summarily dismissed.[1]

WHEREFORE, in view of all the foregoing, it is respectfully requestion that the aforesaid Petition For Reconsideration and Rehearing of John Poole Broadcasting Co. Inc. (KBIG) be denied.

Respectfully submitted,

MIDWEST RADIO-TELEVISION, INC.
(WCCO)

By /s/ Peter Shuebruk

By /s/ Herbert M. Schulkind

Fly, Shuebruk, Blume and Gaguine
1612 K Street, N.W., Washington 6, D.C.
Its Attorneys

November 6, 1961

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[1] This proposal was presented by KBIG in a Petition to File Supplemental Comments on July 25, 1961, also long after the date for filing comments and replies in the proceeding; and the pleading was correctly rejected by the Commission in its Report and Order.

[Certificate of Service] [4702]

[4710]

[Rec'd Nov, 6, 1961 -FCC]

PARTIAL OPPOSITION TO "PETITION FOR RECONSIDERATION AND CONDITIONAL REQUEST FOR EVIDENTIARY HEARING" FILED BY THE GOODWILL STATIONS, INC.

Crowell-Collier Broadcasting Corporation, the licensee of Standard Broadcast Station KFWB, Los Angeles, California (hereinafter referred to as KFWB), by its attorneys, respectfully opposes the "Petition for Reconsideration and Conditional Request for Evidentiary Hearing" filed in the above-entitled proceeding on October 16, 1961, by The Goodwill Stations, Inc., the licensee of Standard Broadcast Station WJR, Detroit (hereinafter referred to as WJR), to the extent that the said WJR petition proposes consideration of the assignment of the frequency 1,000 kilocycles to Station KFMB, San Diego, California.[*] In support thereof the following is shown:

1. On Page 4 of the Engineering Statement filed in support of the WJR petition for reconsideration, it is asserted that there "appear to be some technical possibilities" of operation by KFMB on 1,000 kilocycles, if the Commission would entertain a waiver of

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[*] In an action taken on October 26, 1961, the Commission extended to November 6, 1961 the time for filing responses to petitions for reconsideration of the Commission's September 14, 1961 Report and Order in the above-entitled proceeding.

Rule 3.37 required because of overlapping 2 mv/m and 25 mv/m contours with Station KGBS, operating on 1020 kilocycles at Los Angeles. In Paragraph 18 of the petition, it is asserted that "there are other frequencies than 760 kc better or as well suited for use on a fulltime basis at San Diego with power of 5 kw", a fact which WJR offers to prove in an evidentiary hearing requested pursuant to Section 316 of the Communications Act of 1934, as amended. It appears that 1,000 kilocycles is one of the frequencies which WJR is advancing as preferable to 760 kilocycles for use by KFMB.

2. Station KFWB operates at Los Angeles on the frequency 980 kilocycles, with power of 5 kilowatts, and unlimited hours of operation. Station KFWB places a signal of 2 mv/m over portions of the City of San Diego. Operation by KFMB on the frequency 1,000 kilocycles would be expected to involve an overlap between the 25 mv/m contour of KFMB and the 2 mv/m contour of KFWB, operating on 980 kilocycles at Los Angeles, contrary to Rule 3.37, and would cause objectionably interference to KFWB. (With respect to the location of the KFWB 2 mv/m contour, see the Engineering Exhibits prepared by Hammett & Edison, San Francisco, California, the Consulting Radio Engineers for Station KFWB, dated November 20, 1959, and filed in connection with the application of Burr Stalnaker, John B. Stodelle and Melva G. Chernoff, d/b as Southbay Broadcasters for a construction permit for a new standard broadcast station at Chula Vista, California, File No. BP-11469, Docket No. 12813. See also the Engineering Statement of Robert L. Hammett, dated October 24, 1961, and filed with the Commission in support of the "Opposition to Petitions for Reconsideration" filed by Marietta Broadcasting, Inc. in the

[4712]

above-entitled proceeding on October 26, 1961). In view of the 25 and 2.0 mv/m contour overlap between KFMB and KFWB, KFWB is opposed to any proposal for the allocation of 1,000 kilocycles to KFMB.

WHEREFORE, THE PREMISES CONSIDERED, it is respectfully requested that the Commission take no action in response to the WJR "Petition for Reconsideration and Conditional Request for Evidentiary Hearing" which would look toward the allocation of the frequency 1,000 kilocycles to Station KFMB, San Diego, California.

Respectfully submitted,
CROWELL-COLLIER BROADCASTING CORPORATION
By /s/ John D. Matthews
Its Attorney

John D. Matthews
Dow, Lohnes and Albertson
Munsey Building, Washington, D.C.
Counsel for Crowell-Collier Broadcasting Corporation

November 6, 1961

[Certificate of Service] [4713]

[4770]

FURTHER SUPPLEMENT TO REPORT AND ORDER

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By the Commission: Commissioners Hyde and Ford voting to defer action; Commissioner Lee abstaining from voting.

1. On October 27, 1961, the Commission adopted its first Supplement to the Report and Order of September 13, 1961 in the above-captioned Docket concluding the clear channel proceeding. The purpose of the supplemental Order was to effect certain modifications with regard to the treatment of applications for frequencies within 30 kc of one of the 12 unduplicated Class I-A clear channels and, as such the action represented a reconsideration by the Commission of paragraphs 63-65 of the Report and Order of September 13, 1961.

2. In the Supplemental Report, we stated that applications for new stations on, for change of frequency to, or to increase power or operate during nighttime hours not previously authorized on a frequency within 30 kc of one of the 12 unduplicated channels would not be accepted for filing on or after October 30, 1961. We stated further:

> "Applications for such facilities filed prior to October 30, 1961 will be studied in the light of their likely impact upon the possible future use of the unduplicated clear channels. From such study it is contemplated that more precise engineering criteria might evolve which can then be applied in acting upon those applications now pending and announced as standards to govern the acceptance of future applications on these adjacent frequencies."

3. The Commission has studied 107 pending applications for these adjacent channels and from this study has developed standards to govern our future practice in accepting and acting upon such applications. In substance, these standards reflect our consideration of two possible future uses of the twelve unduplicated Class I-A channels: high power, to a maximum of 750 kc, and duplication in specified areas with a new Class II unlimited time assignment similar to proposed assignments adopted in our Report and Order of September 13, 1961.

4. Accordingly, Section 1.351(b) of the Commission's Rules will be amended to reflect the standards so developed. New applications which contain proper engineering data to demonstrate their compliance with the standards will now be accepted for filing. Applications now on file for the channels adjacent to the unduplicated Class I-A channels will be studied in light of the standards set forth in the amended Rule. Those

applications found not to conform to the standards will be placed in the pending file and held without further processing or consideration until September 1, 1964, or such earlier date as may be announced. Applications conforming to all standards set forth in the amended Rule will be acted upon in normal course.

5. Additionally, the paragraphs of Section 1.351 will be rearranged, primarily for purposes of greater clarity. As amended, Section 1.351(a) refers only to those ten adjacent channels which are within 30 kc of a Class I-A channel for which duplication has been provided but which are not, at the same time, within 30 kc of an unduplicated channel. The amended Section 1.351(a) also incorporates a more precise definition of "undue risk of interference" to a possible new Class II assignment on a duplicated channel. Section 1.351(b) now refers to those twenty channels which are adjacent to both duplicated and unduplicated Class I-A channels and sets forth the criteria which will govern out future acceptance of, and action upon applications for those channels. Section 1.351(c) sets forth analogous criteria for those three channels which are within 30 kc of unduplicated channels and not, at the same time within 30 kc of any channel for which duplication has been provided.

6. The standards adopted herein are simply a further refinement and clarification of matters previously decided. Because we had not previously arrived at the precise criteria to be applied in accepting and acting upon applications involving frequencies adjacent to one or more of the Class I-A channels, we had provided, in our September 14, 1961 Report and Order, that certain applications would be accepted for filing and held in a pending file. Having now formulated the criteria, it becomes less of an administrative burden to accept only those applications which contain the requisite showing of compliance with the criteria announced herein. This change of procedure is in the public interest and does not affect any substantive rights. See Fort Harrison Telecasting Corporation v. F.C.C., U.S. App. D.C., No. 16,321, decided December 14, 1961, 22 RR 2031. We note further that our present action is a relaxation of the restrictions announced in the Supplement to Report and Order adopted October 27, 1961, (FCC 61-1293), in which we amended the Rules to provide that no applications for new stations, power increases, or new nighttime operations on frequencies adjacent to the twelve unduplicated Class I-A channels would be accepted or considered.

7. In one respect, the rules now adopted impose an additional restriction, in that applications for major changes in facilities other than power increases or new nighttime hours -- i.e., changes involving new directional or non-directional operation -- will be subject to the provisions of Section 1.351, where they would have possible impact on potential uses of the twelve unduplicated I-A channels. Hitherto, such applications have not been subject to any such restrictions (See § 1.351(b)(4), as adopted in the September Report and Order and left unchanged in the October Supplement). With respect to the very few pending applications falling into this category no such problems of possible impact exist; therefore this change affects, at most, only potential applicants. Such additional restriction is clearly required if possible uses of the unduplicated I-A channels are to be protected.

[4772]

8. Authority for adoption of the rule changes herein is contained in Sections 4(i) and (j), 303 and 307(b) of the Communications Act of 1934, as amended. Section 4(a) of the Administrative Procedure Act exempts from the requirement of publication of general notice of proposed rule making "rules of agency organization, procedure, or practice". Because the rule changes herein are procedural, notice and public procedure thereon are not required. Similarly, the effective date provision of Section 4(c) of that act applies only to substantive rules whereas the present Rule changes are, as noted above, both procedural and for the most part, a relaxation of existing restrictions. (See also Sections 1.311(a) and 1.219(b) of our Rules). We find, therefore, that the public interest will be served by making the rules changes herein effective immediately and, for these reasons, and for the reasons stated in the preceding paragraphs, notice and rule-making would not serve the public interest.

9. In view of the foregoing, IT IS ORDERED, This 31st day of January, 1962, that Section 1.351 of the Commission's Rules IS FURTHER AMENDED as set forth in the Appendix hereto, effective January 31, 1962.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Released: February 5, 1962

NOTE: Rules changes herein will be covered by T.S. I-16.

[4773]

APPENDIX

Section 1.351 is amended to read as follows:

§ 1.351 Applications for frequencies adjacent to Class I-A channels.

Notwithstanding the provisions of any other rules of the Commission, all applications (regardless of when they were or may be filed) for frequencies located within 30 kc of a Class I-A channel listed in § 3.25(a) of this chapter will be subject to the provisions of this section. The provisions of paragraph (a) of this section apply to the frequencies listed therein, which are within 30 kc of a Class I-A channel on which an unlimited time Class II assignment is specifically provided for in §§ 3.22 or 3.25(a) of this chapter, and which are not within 30 kc of the remaining Class I-A channels (except with respect to 740 and 1230 kc which are to be considered as being within 30 kc of duplicated I-A channels only). The provisions of paragraph (b) of this section apply to the frequencies listed in that paragraph, which are within 30 kc of unduplicated Class I-A channels and also, in each case, within 30 kc of Class I-A channels on which the location of a Class II-A or other unlimited time Class II station has been specified in §§ 3.22 or 3.25 of this chapter. The provisions of paragraph (c) of this section apply to the three frequencies listed therein, which are within 30 kc of unduplicated Class I-A channels only.

(a)(1) The provisions of this paragraph apply to the following frequencies:

740, 910, 920, 990, 100, 1080, 1090, 1110, 1230, and 1240 kcs.

(2) Where it appears that the facilities requested in any application for one of the designated frequencies (other than an application by an existing Class IV station to increase daytime power on 1230 or 1240 kcs) involves undue risk of interference or prohibited overlap with a possible new Class II-A assignment specified in § 3.22 of this chapter or a new unlimited time Class II assignment at Anchorage, Alaska, or San Diego, California, specified in § 3.25(a) of this chapter, such application will not be accepted for filing or, if filed prior to the effective date of this Rule, will not be acted upon, until the location and operating facilities of such new Class II station are established. An application for one of the designated frequencies shall be deemed to involve undue risk of interference with a possible new Class II assignment unless it is demonstrated that no interference would be caused to specified II-A assignments within 30 kc assuming such facilities to be located at the nearest point on the boundary of the nearest state specified by the Clear Channel Decision released September 14, 1961, and assuming such II-A facility radiates at least 1238 mv/m omnidirectionally; and, in the case of frequencies within 30 kc of 750 kc or 760 kc, the proposed facility would not cause interference to Class II assignments at San Diego, California, or Anchorage Alaska, specified in § 3.25(a) of this chapter.

(3) Assignments of new Class II facilities provided for in §§ 3.22 and 3.25(a) of this chapter will be made without regard to the pendency of applications on adjacent frequencies, (i.e., the ten frequencies designated in subparagraph (1) of this paragraph and the additional 20 frequencies which are within 30 kc of both duplicated and unduplicated Class I-A channels).

Any hearing which may be held on an application for an adjacent frequency will not be comparative with respect to the Class II-A facility, and any issues pertaining to the mutual impact of the Class II-A and adjacent channel proposals will be confined to the question of whether, with the Class II station operating as proposed, the public interest would be served by a grant of the adjacent channel application.

(b)(1) Until September 1, 1964, or such earlier date as may be announced, the provisions of this paragraph will apply to all applications for the following frequencies:

680, 690, 710, 730, 790, 800, 810, 850, 860, 900, 1010,
1050, 1060, 1070, 1130, 1140, 1150, 1170, 1190 and
1220 kcs.

(2) Applications for new stations on, change of existing stations to, or for any major change in operation of stations presently operating on the designated frequencies will be accepted for filing and acted upon in normal course provided they are accompanied by appropriate exhibits and necessary supporting data to show clearly the following with respect to all Class I-A channels within 30 kc of the designated frequency:

(i) The proposed transmitter site is located inside the area encompassed by a 500 mile extension of the 0.5 mv/m-50% nighttime contour of Class I-A stations on unduplicated channels.

(ii) No interference or prohibited overlap would be caused to Class I-A stations on unduplicated I-A channels, assuming such stations operate with power increased to 750 kws with their present antenna systems and radiation patterns.

(iii) No interference or prohibited overlap would be caused to an assumed Class II-A station on an unduplicated channel, radiating at least 1238 mv/m omnidirectionally from the nearest point on the boundary described in subparagraph (i) of this paragraph.

(iv) No interference or prohibited overlap would be caused to presently specified Class II-A assignments, assuming such facilities to be located at the nearest point on the boundary of the nearest state specified by the Clear Channel Decision released September 14, 1961, and assuming such II-A facility radiates at least 1238 mv/m omnidirectionally; and, in the case of frequencies within 30 kc of 750 kc or 760 kc, the proposed facility would not cause interference to Class II assignments at San Diego, California, or Anchorage, Alaska, specified in § 3.25(a) of this chapter.

(3) Applications of the type specified in subparagraph (2) of this paragraph filed before October 30, 1961 will be studied to determine whether they comply with each of the four standards set forth in subparagraph (2) of this paragraph. Those applications which are found to comply fully with the standards will be processed and acted upon in normal course. Applications which fail to comply with one or more of the standards will be retained in the pending file without further processing or consideration.

[4775]

(4) Applications for other changes in facilities on the designated frequencies will be processed and acted upon in normal course.

(c)(1) Until September 1, 1964, or such earlier date as may be announced, the provisions of this paragraph will apply to all applications for the following frequencies:

610, 620, 630 kcs.

(2) Applications for new stations on, change of existing stations to, or for any major change in operation of stations presently operating on the designated frequencies will be accepted for filing and acted upon in normal course provided they are accompanied by appropriate exhibits and necessary supporting data to show clearly the following with respect to all Class I-A channels within 30 kc of the designated frequency:

(i) The proposed transmitter site is located inside the area encompassed by a 500 mile extension of the 0.5 mv/m -

50% nighttime contour of Class I-A stations on unduplicated channels.

(ii) No interference or prohibited overlap would be caused to Class I-A stations on unduplicated I-A channels, assuming such stations operate with power increased to 750 kw, with their present antenna systems and radiation patterns.

(iii) No interference or prohibited overlap would be caused to an assumed Class II-A station on an unduplicated channel, radiating at least 1238 mv/m omnidirectionally from the nearest point on the boundary described in subparagraph (i) of this paragraph.

(3) Applications of the type specified in subparagraph (2) of this paragraph filed before October 30, 1961 will be studied to determine whether they comply with each of the three standards set forth in subparagraph (2) of this paragraph. Those applications which are found to comply fully with the standards will be processed and acted upon a normal course. Applications which fail to comply with one or more of the standards will be retained in the pending file without further processing or consideration.

(4) Applications for other changes in facilities on the designated frequencies will be processed and acted upon in normal course.

(d)(1) Applications previously accepted for filing which must be held without action pursuant to paragraphs (a), (b), (c) of this section, will not be designated for hearing unless they conflict with applications which may be acted upon in normal course.

[4776]

(2) If the decision in a hearing looks toward grant of an application which may not be acted upon, pursuant to paragraphs (a), (b) or (c) of this section, such application and all applications conflicting with it will be held without final action to the extent required by paragraphs (a), (b), or (c) of this section.

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MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Lee dissenting and issuing a statement; Commissioner Henry not participating.

1. The Commission has before it for consideration various petitions for rehearing, reconsideration, partial reconsideration, and stay of the effective date of all or certain limited specific portions of its Report and Order adopted September 13, 1961 in the above-captioned proceeding.[1/]

Requests for Stay or Partial Stay and Demands for Hearing

2. Turning first to the requests that we stay the effective date of all or portions of the rule changes, we find nothing therein, despite some assertions of irreparable harm, that would warrant such extraordinary relief. This has been a most extensive proceeding. The conclusions reached reflect more than sixteen years of rule making and hearing. No person can seriously contend that he was not given every opportunity fully and fairly to present his views for consideration. That the issues to be met were not easy of resolution and were not taken lightly can be inferred from the length of the proceeding itself.

3. While technically those pleadings which sought a stay of the effective date of the rule changes until petitions for reconsideration were disposed of are now moot, we do not rest our denial of such requests on that ground. The rule changes, which became effective October 30, 1961, basically provide for applications for new Class II-A stations in accordance with specified procedures. Irreparable injury may not logically be urged as likely to result from the mere acceptance of applications. None of these applications could be acted upon until after January 30, 1962, in accordance with the express terms of the rules adopted. The determination of hearing rights must in each instance await concrete proposals for placement of new stations and the narrowing of issues on consideration of such applications. As to the

concern which one party manifests for those who might apply for a Class II-A station "which might never be processed or granted", the risk to the applicant is no greater than in any other administrative decision which is subject to judicial challenge.

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[1] The Appendix hereto sets forth the names of those filing petitions.

[4926]

Congressional Action

4. It should be recognized at the outset of our reconsideration that much congressional interest has been manifested in this matter since public notice was given in June 1961 of instructions to the staff as to the decision to be prepared.

5. Bills have been introduced in both houses of Congress which would either prohibit us from "duplicating" any of the Class I-A clear channels or would require us, under certain conditions, to authorize power in excess of 50 kw, or both. Our Report and Order of September 1961 provided that no application for a Class II-A station would be granted prior to January 30, 1962, so that interested parties might have ample opportunity to prepare applications. We have further delayed such grants to provide Congress opportunity to act in the matter should it so desire. Hearings on the various bills have been held before the Communications and Power Subcommittee of the House Interstate and Foreign Commerce Committee at which the Commission expressed its opposition to the bills.

6. On July 2, 1962 the House of Representatives adopted a Resolution (H. Res. 714, 87th Cong., 2d Sess.) expressing the sense of the House that the Commission may, notwithstanding the 1938 Senate Resolution (S. Res. 294, 75th Cong., 3d Sess., adopted June 7, 1938), authorize the use of power in excess of 50 kilowatts on any of the 25 Class I-A clear channels should it find that such operation will serve the public interest, convenience, or necessity. The Resolution also

expresses the sense of the House that we should not authorize nighttime duplication of the Class I-A clear channels for a period of one year.

7. The first question with respect to Congressional action concerns the 1938 Senate Resolution opposing power greater than 50 kilowatts. Clear Channel Broadcasting Service (CCBS) directs specific arguments regarding the effect of that Resolution on our decision. Those arguments were also presented at earlier stages of this proceeding and were considered by the Commission in reaching its decision. However, we believe it would be helpful to clarify our position.

8. The reference to Congressional policy in our Report and Order, rather than of decisional significance, was merely intended as a recitation of historical fact, and also as an indication that, if and when higher power is considered for any frequencies, whatever Congressional policy then exists on the matter will be accorded due recognition. We wish to make clear that a majority of the Commission determined, on grounds wholly independent of the 1938 Senate Resolution, that higher power should not be permitted at this time.

9. A majority of the Commission felt, and still feels, that further studies are needed to determine whether such authorization of higher power would be in the public interest. Thus, the Senate Resolution did not affect that part of our decision which reserves for future consideration the question of any additional use to be made of the twelve reserved Class I-A channels. Moreover, a majority of the Commission believes that the additional unlimited-time assignments provided for can be effectuated without substantial impairment of the wide-area service rendered by the I-A stations, and without impingement on the possibility of sufficient improvement of service through higher power -- if that is later concluded to be appropriate -- on the other 12 channels better suited for that approach, and perhaps also on some of the 13 now duplicated. This conclusion was the culmination

of 16 years of hearings and study and detailed reasons for the result are set forth in our decision.

10. The House Resolution, therefore, has no impact on the Commission's Report and Order of September 1961, because, as noted, absence or elimination of the 1938 Senate Resolution would not have changed that decision, which is reaffirmed herein. However, in its testimony in February 1962, before the Communications and Power Subcommittee of the House Interstate and Foregin Commerce Committee, the Commission indicated it would welcome Congressional guidance on the question of higher power. It was indicated that this would be helpful because a majority of the Commission, while not yet convinced that power in excess of 50 kilowatts would be in the public interest, has carefully preserved the possibility of future utilization of this potential, should further studies convince the Commission that higher power should be authorized. The 1938 Senate Resolution and the 1962 House Resolution look in opposite directions. It would be helpful, therefore, if a current joint expression of the views of Congress could be obtained on this question for guidance in whatever further proceedings are undertaken to evaluate possible use of higher power.

11. The Commission recognizes, as many parties to this proceeding have argued, that a resolution of one House is not legally binding. However, we must, of course, give due consideration to the 1962 Resolution expressing the sense of the House that the Commission refrain from authorizing additional nighttime stations on the Class I-A clear channels until July 2, 1963. Therefore, while we are reluctant to postpone further the effectuation of this decision, we recognize that limited delay requested by the Resolution will give Congress additional opportunity to enact legislation concerning this matter if it should desire to do so. However we are herein reaffirming the Commission's decision in this matter, and we do not contemplate any further administrative delay beyond July 2, 1963, in implementing that decision. Applications for Class II-A stations will continue to be

accepted in the interim. They will be held in abeyance until July 2, 1963, and, absent controlling legislation, will at that time be duly evaluated and acted upon in accordance with the Commission's rules.

[4928]

12. There is one aspect of the Committee Report (H. Rpt. 1954, 87th Cong., 2d Sess.) accompanying the 1962 House Resolution which goes further than anything stated in the Resolution and deserves comment. That Report envisioned a one-year moratorium as giving "all Class I-A clear channels an opportunity to file with the Commission an application to go to higher power." We feel constrained to point out, however, that such opportunity is not available. A longstanding Commission rule pertaining to standard broadcast stations provides for no power in excess of 50 kilowatts. One of the reasons this proceeding was initiated was to determine whether that rule should be changed. We have concluded that the present 50 kw limitation should remain unchanged at this time. Thus, an application by a standard broadcast station to use power in excess of 50 kw would not be in conformity with the Commission's rules. In the case of those frequencies herein reserved for future disposition, a petition for rulemaking looking toward authorization of higher power could be entertained. In light of the Commission's decision, however, an application merely seeking power in excess of 50 kw is not acceptable and will be returned without prejudice.

13. As evidenced in the House Report and in the comments on the floor, some concern was aslo expressed as to the effect of our decision on national defense communications. As we advised the House Committee, the one additional nighttime station proposed on each of 13 of the Class I-A clear channels will not cause interference within the normal secondary broadcast service area of the Class I-A stations involved. Additionally, the radio teletype information proposed to be superimposed on the subject station's normal program transmissions is less susceptible to interference because of the special techniques utilized.

14. It is not contemplated that the BRECOM system would depend entirely on the clear channels. In fact, the addition of 50 kw operations by Class II-A stations in the West may well prove to be of some value in such a system. The Commission has worked very closely with the Department of Defense in the BRECOM project, which is still in the experimental and developmental stage. It is, in fact, a joint project of the Federal Communications Commission and the Department of Defense. It is the Commission's informed judgment that the national defense preparedness is not impaired by the clear channel decision now out standing.

Summary of Basic Problem

15. Our present task is to complete our examination of the petitions for reconsideration without further delay. In so doing, we have re-examined our basic decision. In oversimplified terms, we are faced with this situation. Much of the country receives no nighttime primary radio service. These areas we refer to as "white areas". They do, generally, receive skywave or secondary service but such service is of an intermittent nature and its availability depends upon a multitude of factors including weather, sunspot activity, atmospheric noise, etc. Present unduplicated use of I-A clear channels with a 50 kilowatt power ceiling is certainly an incomplete use of these channesl which still leaves us far short of the attainable degree of service to underserved areas. Moreover, our right to I-A priority thereon might be open to serious challenge from our North American neighbors if we do not make fuller use of such channels.

16. To bring about badly needed improvement in nighttime service various alternatives have been suggested, which resolve generally into duplication, higher power, or some combination thereof. Higher power offers improvements in nighttime secondary service while duplication holds out the promise of limited added nighttime primary service. More-

over, questions of social and economic import arise in the higher power approach which complicate the simple engineering choice. Duplication of all I-A channels would not bring primary service to all white areas and would largely preclude the benefits of added secondary service which higher power could bring. Either alternative leaves much to be desired and we have attempted through a judicious combination of the possible advantages of the two approaches to reap some of the benefits of each. Thus, through duplication we extend to as many persons as possible the benefits of a first nighttime primary service. This type of service is better and more to be desired than skywave service. We have at the same time, however, retained the status quo on a sufficient number of channels which, should economic, social, and other considerations indicate higher power is in the public interest, can bring a total of four skywave services to practically the entire United States.

Channel by Channel Reappraisal

17. A complete reappraisal, frequency by frequency, has been made of the use to which each of the Class I-A clear channels should be put. A few channels, whether because of technical or international considerations or for policy reasons, clearly fall within the duplicated or the reserved group as set forth in our basic decision. Some others, while the engineering considerations might not point unmistakeable to a clear-cut decision that they fall within a particular one of the two categories, have a preponderance of reasons why one solution is to be preferred over the other.

In the case of a few, while higher power might be technically feasible, the area they would serve with a secondary service at higher power is otherwise provided for either by present operations or by possible operations at higher power on the reserved frequencies. In a very few cases the choice appears rather difficult when considering the channel on an individual basis. However, applying the general guidelines mentioned at paragraph 26 of the Report and Order of September, 1961, and considering how the two basic objectives are met by the combination of frequencies contained within each group, we are convinced that the decisions, while not easy, are sound.

18. In this connection, before turning to a more detailed consideration of the individual channels, it might be well to emphasize a portion of the concluding observations appearing in paragraph 101 of the Report and Order:

> ". . .merit attaches to very many of the proposals which have been urged upon us, including some of those which we herein reject. Our essential task in this proceeding has been to select among the myriad solutions offered those which, on net balance, taking into account the many pertinent considerations, would best serve the public interest. The opposing factors bearing upon our judgments in some instances are closely balanced. While recognizing that much can be said for numerous alternative approaches, we now conclude that the course laid out herein both as reflected in the rule changes now adopted and in the preservation for the time being of the status quo on 12 Class I-A clear channels, represents the best solution available at this time."

640 kc

19. Since 1944, Station WOI, Ames, Iowa (which is regularly licensed to operate on this frequency daytime with 5 kw non-directionally), has operated with 1 kw power from 6:00 a.m. (C.S.T.) to sunrise at Ames, which is during nighttime hours when sunrise is later than 6:00. Such operation has been permitted under a series of Special Service Authorizations (and more recently under other temporary authority), a type of authorization employed in exceptional circumstances to permit uses of AM frequencies for which provision is not made in the general rules. There is currently pending an adjudicatory proceeding, Docket No. 11290, in which there is at issue the basic question of whether the public interest would be served by continuing to authorize WOI's pre-sunrise operation.

20. The Report and Order, together with Note 1 to Section 3.25(a) (5) (ii) paves the way procedurally for the acceptance of applications for a pre-sunrise operation on 640 kc at Ames, Iowa.

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21. Earle C. Anthony, Inc., licensee of KFI, Los Angeles, the Class I-A station on 640 kc, complains that this issue was outside the record and that our action constitutes a pre-judgment of the adjudicatory issues. We find no merit in either contention. The rules expressly provide that such application will be acted upon only after and in light of the decisions reached in that docket. We fail to see how it can seriously be contended that merely permitting such application suggests pre-judgment. By our procedural action we have not modified KFI-s license, nor have we made any substantive findings as to the adjudicatory matters. The issues in both proceedings are such that the inter-relation of the clear channel issues and the operation by WOI on such Class I-A frequency is apparent.

22. We reaffirm our decision that, as a matter of policy, no more than one station in addition to the Class I-A station should at this time be permitted to operate on such channel at night. In our Report and Order we said:

> "As to the suggestion that more than one unlimited time Class II station be authorized on the same Class I-A channel, we deem it preferable at this time to permit only one unlimited time Class II station on the channels selected for such use. After we have the benefit of the manner in which the new unlimited time Class II stations are utilized, and details of actual performance, interference, etc. become available, we will be in a position to determine whether the public interest warrants assignments of additional unlimited time facilities on these channels, and, if so, to determine under what conditions they should be permitted. We are convinced, however, that such a decision should await further

developments and that extension of the plan adopted herein to include such multiple use is not warranted at this time."

Additionally, there is excellent potential for skywave service to western states should KFI eventually utilize higher power. Therefore, 640 kc is included in the group reserved for future consideration.

650 kc

23. The frequency 650 kc, on which WSM, Nashville, Tennessee, is the Class I-A station, while susceptible of duplication, has been placed in the category as to which no present change is contemplated. WSM is strategically located for providing skywave service to the Southeast -- should we upon further study determine higher power should be authorized. Some 18,000,000 of the 25,000,000 people in white areas live east of the Mississippi River, with many of these persons residing in the Southeast where it is difficult to provide skywave service because of the high atmospheric noise levels.

24. If higher power is sometime provided for, the stations best located to provide skywave service to this region are WSM, WLW on 700 kc at Cincinnati, WHAS on 840 kc at Louisville, and WWL on 870 kc at New Orleans. But for the special disposition made of 750 kc, as discussed thereunder, WSB at Atlanta would also fall within this group.

25. Should these stations be permitted to operate with 750 kilowatts, it appears technically feasible for all to serve portions of the Southeast.

26. It should be noted also that this area is virtually unserved at present with type E skywave service from existing Class I-A operations. We feel that, until we complete our further studies on higher power, the potential of these services should be retained.

660 kc

27. KFAR, Fairbanks, Alaska, already operates unlimited time on this frequency in addition to the Class I-A station, WNBC, New York.

Although WNBC's potential for serving white areas through the use of higher power appears very limited,[2] we have declined, at this time, to further duplicate I-A frequencies on which two nighttime operations now exist. This is discussed more fully above under 640 kc. Our Report and Order at paragraph 72 discusses additional reasons why no further duplication of 660 kc is deemed warranted.

670 kc

28. WMAQ, Chicago, is the Class I-A station on 670 kc. Because the same general considerations also apply to the other I-A stations in Chicago, we shall discuss them as a group. Those stations are WGN on 720 kc, WBBM on 780 kc, and WLS on 890 kc. Generally speaking, these stations could be used either for duplication or to offer potential skywave service at higher power. We have reiterated our purpose to bring additional nighttime primary service to white areas while reserving sufficient frequencies having a potential to provide four type E skywave services substantially to the entire country.

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[2] To provide adjacent channel protection to I-A operations of WMAQ on 670 kc at Chicago and WSM on 650 kc at Nashville, WNBC with higher power would have to direct its radiation northward along the coastal states already well served with skywave signals.

29. On balance, our reconsideration has led us to believe that the original disposition made of these frequencies is the better choice. Class II-A stations are proposed thereon for Idaho, Nevada, and Utah. It is technically feasible and desirable that they be used to provide nighttime primary service to underserved areas of the West.

30. As to their skywave service potential at higher power, protection requirements to foreign and domestic adjacent channel assignments would limit radiation eastward and to the south. While they could directionalize toward the West, their potential for improving skywave service to the West is not so great as that of some other Class I-A

channels on which we are presently retaining the status quo, namely 640, 820, 830, 1040, 1160, and 1200 kc. As to those frequencies just named, the considerations pointed toward no present duplication. Thus, the Chicago stations can serve our basic objective and are not needed, nor as well suited as some others, for providing skywave service to the West should higher power someday be authorized.

31. Additionally, with specific reference to 670 kc, NBC attacks as incorrect our inclusion (para. 37) of WMAQ as a station whose useful skywave service is confined to the region of the Great Lakes. Whether or not this is the case is not of great significance because the rules adopted in the Clear Channel Report and Order define the 0.5 mv/m-50% skywave contour of the Class I-A stations -- whereever it may fall -- as the contour which the co-channel Class II-A station must protect. Further, in view of this protection requirement, Figure 6 of the Engineering Affidavit associated with NBC's Comments in response to the Third Notice, which shows a wide area of interference within WMAQ's 0.5 mv/m-50% skywave contour resulting from an assumed co-channel Class II-A operation in Idaho, is of little materiality. The showing is based upon an assumed directional transmitting antenna for the Class II-A station which does not meet the requirements of the rules adopted.

700 kc

32. WLW operates the Class I-A station on this frequency at Cincinnati, Ohio. As discussed more fully in connection with 650 kc, we are reluctant to take any action at this time which would limit its potential for providing improved skywave service in underserved areas of the Southeast.

33. The future course by which this frequency will best serve the public interest is thus left open. We note in passing that the only restriction to an additional assignment on 700 kc is the required adjacent

channel protection to KIRO on 710 kc at Seattle. Perhaps, then, it might prove feasible, if otherwise found to be in the public interest, eventually to achieve some benefits of both approaches on this frequency.

720 kc

34. WGN, Chicago -- discussed under 670 kc.

750 kc

35. We have reserved 750 kc for use at Anchorage, Alaska, by KFQD, which must vacate 730 kc under the terms of the United States/Mexican Agreement which entered into effect in June, 1961.

36. The Report and Order explained in greater detail the reasons for such action. Our re-examination convinces us that a better replacement for KFQD's loss of 730 kc could not be found. The proximity in the spectrum of 750 kc to its present 730 kc should permit service to practically the same area and with little required in the way of expense or equipment modification.

37. Atlanta Newspapers, Inc. licensee of WSB, Atlanta, the Class I-A station on 750 kc, argues that duplication should not be provided for on its frequency. We find nothing presented in its contentions which would warrant changing this aspect of our decision. WSB points out the potential it has for providing service to "white areas" in the Southeast at higher power. Once again, we must note that we are fully cognizant that higher power potential exists with respect to some channels other than those on which no action has been taken at this time. We have decided that the duplication provided in the Report and Order is in the public interest. We reaffirm that conclusion and that 750 kc is included within the group duplicated. It should further be noted that, while the decision speaks in terms of future consideration of disposition of the 12 "reserved" channels, the Commission has a continuing duty to see to it that all channels are utilized in a manner which will best serve the public interest. Therefore, just as multiple use of a frequency is mentioned as a possibility for future consideration, so too are we free to consider in the future the use of higher power on the 13 duplicated Class I-A

frequencies to the extent such use may be consistent with the duplication permitted herein and other public interest considerations.

760 kc

38. Our decision of September, 1961 went into considerable detail as to why this frequency was selected for use by KFMB, San Diego, California, which loses its present frequency (540 kc) under the terms of the agreement with Mexico. An exhaustive inquiry, taking into account the many factors detailed in our Report and Order, revealed that, of the I-A frequencies, only 760 kc and 830 kc were feasible for use at San Diego. The whole duplication plan adopted provides for nighttime operation on Class I-A frequencies by no more than one station in addition to the dominant I-A station. As discussed below,

WNYC, New York City presently operates some nighttime hours on 830 kc and, under the policy adopted, further duplication thereon is precluded at this time. The obvious result is that 760 kc is the only I-A frequency available to solve this unique problem.

39. Further, a study made of all frequencies below 760 kc shows the only other frequency available for such use, because of domestic and international co-channel and adjacent channel restrictions, is 550 kc. Radiation by KFMB on 550 kc would be considerably restricted northward by co-channel operation of KAFY, Bakersfield, California and eastward by co-channel KOY, Phoenix, Arizona. KFMB could not, therefore, operate with its present 5 kw and afford these stations the required protection unless it were to directionalize southward and to the west -- in which case much of its signal would be wasted over the Pacific Ocean. (Studies presented by KFMB in this proceeding show such move would result in a reduction in daytime coverage from 18,342 square miles to 1,921 square miles and in nighttime coverage from 884 square miles to 516 square miles).

40. Our assignment of 760 kc to San Diego for use by KFMB

is discussed by several interested parties including Marietta Broadcasting, Inc., licensee of KFMB, which defends the decision; The Goodwill Station, Inc., licensee of WJR, Detroit, the Class I-A station operating on 760 kc, which opposes the assignment; and John Poole Broadcasting Co., Inc., licensee of adjacent channel KBIG, Avalon, California, which is involved in a problem of 2 mv/m and 25 mv/m overlap.

41. KBIG, in its Petition for Reconsideration, contends the Commission is in error in failing to consider assignment of 830 kc either for the use of KBIG or KFMB. It states that it had suggested in reply comments the alternative that "KBIG be given 830 kc thereby freeing 760 kc for assignment to KFMB". Petitioner's memory does not serve him well in this instance. Petitioner in his reply comments made no mention of possible use by KBIG of 830 kc but continued to advocate use of that frequency by KFMB. It was only in supplemental comments offered more than a year late and, therefore, not considered by the Commission (see Report and Order, p. 16, fn. 5) that KBIG suggested possible use of 830 kc by it as a daytime only station with at least 10 kw power. This most untimely suggestion, offered only after public notice had been given of the Commission's tentative decision, was not evaluated. All timely filed comments were, however, considered by the Commission in reaching its decision. Moreover, with respect to use of 830 kc by KFMB, this possibility was specifically considered and rejected. It will be recalled that the Third Notice of Further Proposed Rule Making released September 22, 1959, which contemplated a full-time Class II operation on each of 23 Class I-A clear channels, proposed the use of 830 kc in California. The Commission decided that an unlimited time Class II operation should not be permitted on 830 kc at this time. We find no public interest considerations in any of the filings which would warrant upsetting our decision in this regard. The necessity of a waiver of Section 3.37 of our rules because of a 2/mv/m and 25 mv/m overlap with KBIG was expressly recognized in the Report and Order.

770 kc

42. Our decision presents in extensive detail the history of this frequency and the unique circumstances necessitating the decision as to its

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use. Its disposition was so clearly dictated that, even upon this further reevaluation of the use of each channel, we feel no further comment is required.

43. American Broadcasting Company, licensee of WABC, New York, the Class I-A station on 770, in its Petition for Reconsideration, presents arguments concerned principally with the basic foundation of our decision and restates arguments previously considered by the Commission. Its request that it be permitted to show the advantages of using 660, 880, or 1180 kc rather than 770 kc at Albuquerque has been fully dealt with previously and again denied by our Report and Order (see para. 85(c)). Our earlier decision was specifically upheld by the United States Court of Appeals on that point. (*American Broadcasting Company* v. *FCC*, 280 F. 2d 631, 20 R.R. 2001).

780 kc

44. WBBM, Chicago -- discussed under 670 kc.

820 kc

45. WBAP/WFAA, Forth Worth/Dallas, conduct a share time operation as the Class I-A station on 820 kc. Present foreign and domestic adjacent channel assignments would impose some nighttime radiation restrictions on the use of such frequency at higher power. However, even providing for such restrictions, this station is well located -- by directing radiation toward the northwest -- to provide a needed sky-wave service to all states west of the Mississippi River except for portions of Louisiana, Arkansas, and Washington. Its extensive potential in this regard should be retained pending a final determination on the merits of higher power.

830 kc

46. Since 1943, WNYC, a municipally owned and operated station at New York City, has been permitted under a series of temporary authorizations to operate on 830 kc during certain nighttime hours: 6:00 a.m. (E.S.T.) to local sunrise and from sunset at Minneapolis to 10:00 p.m. (E.S.T.), with power of 1 kw. (WNYC is regularly licensed to operate with 1 kw on 830 kc, with a different directional antenna than it uses nighttime). Notwithstanding the directional antenna employed, WNYC's operation during nighttime hours causes interference within the secondary service area of WCCO at Minneapolis. In a pending adjudicatory proceeding (Docket No. 11227) consideration is being given to the question of whether, balancing the interference caused to WCCO against the service WNYC renders during nighttime hours, the public interest would be served by continuing to permit WNYC's nighttime operation, for which no provision is made in the AM rules governing the use of Class I-A frequencies.

47. The Report and Order, together with Note 2 to Section 3.25(a) (5) (ii) paves the way procedurally for the acceptance of applications for certain nighttime hours of operation on 830 kc at New York City.

48. Midwest Radio-Television, Inc., licensee of WCCO, Minneapolis, the Class I-A station on 830 kc, in its Petition for Reconsideration, raises issues similar to those discussed above with respect to the operation on 640 kc of WOI, Ames, Iowa. The discussion there is equally applicable to WCCO's contentions.

49. Moreover, WCCO's argument in this regard that we are paving the way for regular operation and that Docket No. 11227 contemplates temporary authorization is premature in the light of the procedural nature of our action herein and our disavowal of entering into the hearing issues in this proceeding. WCCO's position, apparently, is that if it is decided in Docket No. 11227 that regular operation by WNYC of the

sort described will be permitted, such decision would go beyond the hearing issues involved in that Docket. But resolution of this argument must await decision in Docket No. 11227. WCCO also points to the fact that, in Note 1 to Section 3.25(a) (5) (ii) relating to 640 kc and Ames, we specifically limited any pre-sunrise operation to one kilowatt, but did not impose the same limitation in Note 2 dealing with 830 kc and New York City. The reason for not imposing such a restriction in the case of New York City relates to the special circumstances involved in the WNYC operation. There appears to be the possibility that, if WNYC should operate nighttime in a manner somewhat different than at present -- e.g., with a different directional pattern and possibly a different transmitter site -- it might be possible to operate with power greater than 1 kilowatt and still afford WCCO as much or even greater protection than at present. We do not wish, at this time, to foreclose such possibility. We emphasize, however, that we are not now passing on the merits of the question of operation during certain nighttime hours by WNYC (a question to be decided in Docket 11227). We emphasize also that it is not our intention to permit any nighttime operation by WNYC, whatever the power, which would increase radiation toward WCCO beyond that currently permitted under the special authorization.

50. As in the case of 640 kc, we have refrained, as a matter of policy, from permitting additional duplication at night on the I-A frequency. Any further use of the frequency can, of course, take cognizance of its higher power potential.

840 kc

51. The Class I-A station on this frequency is WHAS at Louisville, Kentucky. This frequency has been reserved for further study. As developed more fully in the discussion of 650 kc, WHAS has a potential for skywave service to southern states which should, for the present, remain unimpaired. Should the stations reserved for their higher power potential eventually operate with 750 kilowatts, WHAS would provide one of the three type E skywave services to most of Florida and about half

the land area of Georgia and South Carolina, as well as portions of Louisiana and Texas, and would provide one of four such services in the remainder of Georgia and South Carolina.

870 kc

52. WWL at New Orleans is the Class I-A station on 870 kc. This is one of a group of stations discussed under 650 kc on which no present nighttime duplication is permitted pending further study of higher power. It is well located for providing one of four type E services to extensive areas of the Southeast should the stations on "reserved" channels operate with 750 kilowatts.

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880 kc

53. The Class I-A station on 880 kc is WCBS, New York. This frequency is one of a group of clear channel stations located in the Northeast which, by virtue of their location, are ideally situated for duplication by unlimited time stations in the West with negligible effect on present secondary services. Others in this group include KDKA on 1020 kc at Pittsburgh, WBZ on 1030 kc at Boston, WHAM on 1180 kc at Rochester and WCAU on 1210 kc at Philadelphia.

54. While most of these stations would be subject to certain restrictions on radiation with a power of 750 kilowatts, these general observations can be made: they are not well located for serving the West with skywave service; the public interest would not be served simply by utilizing them to add to the abundant skywave services available in the Northeast; and while some of them could serve some white area in the Southeast we are retaining a potential for service to that area on frequencies located in the South and Southeast -- as more fully discussed under 650 kc.

55. These stations, therefore, do not possess a higher power potential of service to white area such as would require that no action be taken with respect to them at this time. On the other hand, they possess

greater flexibility for assignment to states in the West where new unlimited time Class II-A stations in New Mexico, Wyoming, and Montana, as well as one in North or South Dakota or Nebraska and another in either Kansas, Nebraska, or Oklahoma, can render much needed nighttime primary service as set forth in our basic decision.

890 kc

56. WLS, Chicago -- discussed under 670 kc.

1020 kc

57. KDKA, Pittsburgh -- discussed under 880 kc.

1030 kc

58. WBZ, Boston -- discussed under 880 kc.

1040 kc

59. The Class I-A station on 1040 kc is WHO at Des Moines, Iowa. Because its location is so near that of KMOX, St. Louis (1120 kc), these frequencies have been considered together. Both are somewhat centrally located and could be duplicated to bring primary service to the West. Their location is well suited, also, to providing skywave service at higher power. However, here the similarity ends. KMOX on 1120 is virtually surrounded by Class I adjacent channel stations which severely limit its higher power potential, whereas WHO would need to protect only one Class I adjacent channel -- and that is in the East -- so its higher power potential should be retained. Thus, these two frequencies readily lend themselves to different

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treatment with 1120 kc being used to bring nighttime primary service to the West and 1040 kc remaining unduplicated at this time.

60. Columbia Broadcasting System, licensee of KMOX, in a Petition for Reconsideration, contends KMOX should not have been duplicated and that, if a choice is to be made between 1120 and 1040 kc, 1040 kc should be duplicated because 1120 kc has a greater potential for service to white areas with higher power. The Commission has

examined the corrected engineering study submitted by CBS, which purports to show that the potential for improved skywave service which would accrue to KMOX, operating with 750 kw on 1120 kc at St. Louis, Missouri, is substantially identical to that of WHO operating with 750 kw on 1040 kc at Des Moines, Iowa. We are not persuaded by this showing because we find that in order to achieve the wide area skywave service portrayed as resulting from the high power operation of KMOX, the Class I stations operating in Omaha, Nebraska, Charlotte, North Carolina, Shreveport, Louisiana, and New York, New York on channels adjacent to KMOX would be required to accept substantial reductions of their nighttime primary service. This is true whether the engineering standards set out in Exhibit 109 of the Clear Channel proceeding or the engineering standards of the Commission's Rules are used to evaluate service and interference.

61. More specifically, the Commission's Rules, including amendments adopted in the Clear Channel Report and Order, require that the 0.5 mv/m groundwave contour of Class I stations be protected from interference. The operation of KMOX as shown in the Petition for Reconsideration does not meet this requirement. In contrast, similar operation of WHO, which has only one Class I station (Boston) adjacent to it, does satisfy this requirement. It follows that KMOX, operating within the requirements of the Commission's Rules, does not afford the same potential for improved skywave service as does WHO, similarly operating within the requirements of the Commission's Rules. We find no reason, therefore, to alter our conclusions in this regard.

1100 kc

62. KYW, Cleveland, is the Class I-A station on this frequency. Radiation restrictions to prevent adjacent channel nighttime interference to Class I-B stations WBAL, Baltimore, and KTHS, Little Rock, on 1090 kc and to WBT, Charlotte, and KFAB, Omaha, on 1110 kc essentially preclude any nighttime high power operation on 1100 kc.

63. Conversely, duplication of 1100 kc will provide nighttime

primary service to white area. It has been selected for an unlimited time assignment in Colorado.

1120 kc

64. KMOX, St. Louis -- discussed under 1040 kc.

1160 kc

65. The Class I-A operation on this channel is KSL, Salt Lake City. This station is uniquely suited to provide secondary service at night to substantial white areas in the western states by virtue of its location in the center of the extensive white area in the West. At this stage, therefore, we preserve its potential for improving skywave service.

1180 kc

66. WHAM, Rochester -- discussed under 880 kc.

1200 kc

67. WOAI, San Antonio, is well located to serve much of the central and western portions of the country with a skywave signal radiated northwesterly at a power of 750 kilowatts. We have, therefore, taken no action at this time with respect to this frequency.

1210 kc

68. WCAU, Philadelphia -- discussed under 880 kc.

Processing of Pending Applications on Channels Adjacent to the 12 Reserved I-A Channels.

69. Inter-Cities Broadcasting Company requests that Section 1.351(b) of the Rules be changed to permit handling on a case-by-case basis those applications on frequencies within 30 kc of one of the 12 Class I-A channels reserved for future disposition which were in a hearing status with the record closed as of the date of adoption of the Report and Order herein. It contends such parties should be given an opportunity to show that their proposals do not interfere with the future optimum use of the Class I-A clear channels. Lake Huron Broadcasting Corporation asks that applications on certain designated

frequencies be processed in normal course where it can be shown that grants thereof will not risk prejudice to possible future plans for the use of the 12 reserved I-A channels. Several others want all such applications in hearing status to be processed. Another asks that all applications for new stations on 710 kc filed prior to October 30, 1961 be processed. The matters raised by these petitions were considered by the Commission and the details of how applications for frequencies adjacent to a Class I-A clear channel are to be handled are set forth in the Further Supplement to Report and Order adopted January 31, 1962 in this docket, and in Section 1.351 of the Commission's rules as amended that date.

[4941]

Prohibition of New Daytime Assignments on Class I-A Channels

70. Harvey Radio Laboratories, Inc. William H. Buckley, tr/as Tri-Counties Broadcasting Company and John M. Norris, all applicants for new daytime facilities on I-A clear channels, complain of the prohibition of new daytime assignments on the I-A channels and contend the ban in unlawful for having allegedly been imposed without notice and rule making. That the issue in this proceeding encompassed the broad question of what use of the clear channels would best serve the public interest cannot be denied. Nor is it in any way beyond the Commission's power or duty to impose the ban on daytime applications on the I-A clear channels to preserve the gains contemplated as a result of this lengthy study and to protect and provide for a planned future orderly development of the use of such frequencies. The Commission recognizes that private interests and the public interest do not always coincide, but our task is to inquire into and uphold the public interest.

Failure to Provide a "Cut-off" Date for Class II-A Applications

71. Some contend that, while no Class II-A applications could be acted upon prior to January 30, 1962, we should also provide for a maximum period of time during which such applications can be filed.

Failure to do so, it is argued, might mean the new Class II-A assignments could lie fallow for months or years. Other types of applications, it is said, could be delayed in the interim. And it is further urged that lack of a cut-off date encourages prospective applicants for the new assignments to delay filing in order to top the "white area" showing of earlier-filed applications on the same frequency. The Commission, whie not precluding future consideration of such a course if it later appears desirable, does not deem it necessary at this time. It is to be hoped, of course, that applicants will file promptly. Should applications not be forthcoming within a reasonable period of time, the matter may be further re-examined. In any event, this is a matter better left, in our judgment, for determination in light of our experience with such applications in the coming months.

Denial of Educational Reservations

72. The National Association of Educational Broadcasters takes issue with our decision not to reserve any of the new Class II-A assignments for non-commercial educational use. The Commission recognizes that time lags occur before educators can receive proper authorization and funds to make application for broadcast facilities. We are not persuaded, however, that the public interest requires reservation of some of the Class II-A stations for educational use. The public interest will best be served if new Class II-A stations can be established quickly and start rendering needed service to the public. If there is commercial demand for the frequencies, the public interest would not be served by refusing to meet such demand and by withholding use of certain

[4942]

frequencies for possibly extended periods of time to see if there is sufficient educational interest.[3] On the other hand, should there not be commercial interest in some of the frequencies, the time lag would appear sufficient for interested educational groups to pursue the matter. Moreover, we have indicated that no such application could be acted upon for a period of 90 days (i.e., prior to January 30, 1962.) Thus, some time is afforded all interested parties in charting their future course of action.

Other arguments

73. The three networks, Clear Channel Broadcasting Service and Westinghouse Broadcasting Co., Inc. in substance either oppose the basic result reached or contend that a final decision should be made now as to all 25 Class I-A frequencies. These arguments attack the very foundation of our decision and present, for the most part, ideas that were previously expressed. They are adequately dealt with throughout the Report and Order itself which, we believe, makes clear the reasons we reached the conclusions expressed therein. Some suggestions, however are worthy of brief note. Westinghouse would have us specify locations which can meet the 25% test and offer some reasonable likelihood of financial success. We have already rejected (para. 42) requests that we name specific communities for the new Class II-A stations. Further, we noted (para. 44) that the extent to which the facilities here made available are utilized depends upon the judgment of prospective applicants and licensees.

74. Westinghouse contends that the decision raises a problem under Section 307(b) of the Communications Act of 1934, as amended. This section requires the Commission to make "such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same." Westinghouse does not attack the present allocation of Class II-A stations per se as a violation of that Section, but contends that the present duplication will make it difficult if not impossible to carry out the 307(b) mandate if and when we authorize higher power on some frequencies. The Commission is very much cognizant of 307(b) considerations and every effort has been made to secure a fair, efficient and equitable distribution of facilities consistent with the achievement of the goals sought. In

point of fact, an underlying consideration of this whole proceeding has been to bring service to areas now lacking it -- which is simply another way of saying we are trying to make the distribution more fair, efficient and equitable than it has been. To preclude this on the basis of some possible future difficulty in another connection would be unjustified. Moreover, we cannot agree that the contention has substance because our studies show that the group of channels selected for future consideration, if higher power is authorized, would provide four skywave services throughout the nation. By any reasonable interpretation we feel the standards of Section 307(b) have here been fully complied with.

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[3] Of the 30 educational groups filing comments pursuant to the Third Notice, nine indicated some interest in obtaining a frequency. Of those in states to which Class 11-A stations have been assigned, one party states it has funds available which, in that instance, obviates the need for a reservation.

75. NBC contends that the 25% area-or-population test should be modified to establish a more meaningful minimum. The rule in question requires a showing that at least 25% of the area or 25% of the population to be served is without any other primary service. Satisfaction of either requirement is necessary to establish a basis for authorization of the new facility. This does not, however, preclude consideration of other pertinent features of the proposed operation. We should point out, nevertheless, that our basic concern is with the extensive land area that does not now have any primary service. The limitation in the extent to which a single station can render a groundwave service at standard broadcast frequencies, under a power limitation of 50 kilowatts, adverse conductivity and other terrain features, etc., is well-known and inherent in the standard broadcast band. The Commission has recognized these limitations and is aware of the limited extent to which individual stations can contribute to elimination of the deficiency. Nevertheless the overall problem continues to be basically

one of obtaining area coverage. Obviously a service to an area with no population whatsoever would be pointless and as between two areas both without service, provision for service to the area with the greater population is ordinarily to be preferred. If we were to assume a case where an applicant meets the 25% test on the basis of area, rather than population, and meets the other requirements of the rules so that his application is acceptable for filing and if it is found upon examination that he proposes to serve a virtually uninhabited region, then the Commission, in the absence of other applications for the frequency, will be faced with the question of whether it is more in the public interest to grant such application, wait for other applicants to file for the frequency, or consider some alternate disposition of the frequency. The Commission's decision is, obviously, grounded upon an expectation that it will work. Should demand not develop for the frequencies, it does not mean the Commission will be forced to sit idly by and let the present less efficient use of the I-A frequencies continue.

76. NBC contends the Commission should consider the alternative of authorizing FM stations rather than the proposed Class II-A stations. It suggests that when, in October 1947, the Commission ruled that the subject of FM was irrelevant in this proceeding the issues were directed substantially at the general question of establishing high power, wide service area Class I stations in the West, and that since the Class II-A stations would be limited in their coverage, this "change of viewpoint" requires re-evaluation of FM's potential usefulness in these areas. Among other things, NBC's concept of the issues of the proceeding is too narrow. For example, the original order of February 20, 1945 initiating the proceeding included the following:

> "WHEREAS, the Commission has received many applications requesting authorization for the operation of additional stations and for the use of higher power on the clear channel frequencies;"

Issue 7 read as follows:

> "7. What new rules or regulations, if any, should be promulgated

to govern the power or hours of operation of Class II stations operating on clear channels."

77. By Memorandum Opinion and Order of December 30, 1947, the Commission reviewed and reaffirmed its decision to exclude all information concerning FM broadcasting. It noted that the clear channel proceeding has always been considered as pertaining to and concerning the standard broadcast band. Its concern, at that time, that such information would merely serve to delay a conclusion of the proceeding is certainly more urgent today in view of the years which have intervened. Moreover, it is of interest that NBC, while filing comments at every stage of this proceeding, has not seen fit to raise the question until now.

78. NBC contends that neither the former rules nor the rules adopted in the Clear Channel Report and Order include a requirement to determine directional antenna performance in accordance with FCC's Report, TRR 1.2.7., or a substitute which would permit a realistic determination of the actual extent of interference caused to the Class I-A stations. The Report referred to is principally a statistical analysis of data acquired from a series of tests and measurements made of certain selected directional antenna systems in actual use by broadcast stations. Empirical formulas are developed as a possible tool for improving in small degree the predictions required in assessing performance, including interference effects of a broadcast station utilizing a directional antenna.

79. Like many of the refined prediction and evaluation tools developed during the course of the Clear Channel proceeding, the merits of their use in the proceeding itself by no means implies that they should be incorporated in Commission rules or that the detailed and complicated processes involved should be adopted as a routine application processing procedure. The petitioner, in effect, is suggesting that this be done and that we modify the present approach to the use of

directional antennas used to control interference between broadcast stations. Whatever considerations evolve from any further inquiry along these lines will apply to directional antennas used by any class of station. Based on the limited data available there is no assurance that any significant increase in accuracy would result from the use of these theories. The Commission does not feel that the data acquired and conclusions reached form a sufficient basis for changing the rules at this time.

80. Clear Channel Broadcasting Service (CCBS) sets forth a number of alleged inconsistencies in our Report and Order. Careful analysis of these charges, however, reveals that CCBS would simply have reached different conclusions. The attack, for the most part, is upon our recognition that the situation is not black or white and that some merit attaches to many of the proposals offered. We further recognized (see para. 101 of Report and Order, quoted in part in para. 17 hereof) that the opposing factors bearing on our judgments were often closely balanced. CCBS' recitation seizes upon our language and alleges it is "inconsistent" where it differs somewhat from a conclusion CCBS would draw or from a contention it has presented which may have some merit to it but was found outweighed by other factors.. We believe the decision read in its entirety amply supports our findings.

[4945]

81. CCBS contends we failed to resolve Issues 9 and 10 as originally designated in our Order of February 1945. They read as follows:

> "9. Whether and to what extent the clear channel stations render a program service particularly suited to the needs of listeners in rural areas.
>
> 10. The extent to which the service areas of clear channel stations overlap and the extent to which this involves a duplication of program service."

We fail to understand CCBS' concern here because it points out that issue 9 should be resolved in accordance with its Comments of August 15, 1958 which indicated, among other things, that the fact the record is outdated "does not lead to the conclusion that the record is too outdated to provide a sound basis for resolving the basic issue posed in this proceeding -- namely, how to improve service to the vast underserved areas and populations." Moreover, CCBS urges that we find Issue 10 is "irrelevant to the basic considerations involved in this proceeding." If in the one instance we are not precluded from deciding the basic questions and in the other the issue is contended to be irrelevant, CCBS would not be aided by their resolution.

82. We did not, and do not now, deem it essential to prolong our decision by a useless repetition of historical detail of this voluminous and protracted proceeding. As CCBS recognizes, the Further Notice of April 15, 1958 resolved many of these issues and, at least strongly implied that others -- such as Issue 9 -- were not essential to a resolution of the basic questions involved in the proceeding (with which, as we have seen, CCBS expressly agrees). We have previously noted that this whole proceeding, once of extremely wide scope, has over the years been considerably narrowed. As a result, the original 11 isues have long since been modified by subsequent rule making notices directed at more specific solutions.

83. CCBS also contends we must consider the pressure from other nations to use frequencies on which the United States has Class I clear channel rights. Our efforts in this proceeding to better utilize these frequencies should be an advantage, rather than a detriment, to us in any future international negotiations.

Conclusion

84. We adhere to our belief that, on balance, the adopted solution represents the best result available at this time. The Report and Order read in its entirety and in the light of the above language makes unnecessary any more detailed rebuttal of many of the arguments now advanced that some different solution should have been adopted. In this connection,

some petitioners simply restate the case for higher power. Others ask that more than one Class II station be permitted on a frequency. Nothing

new was found in these requests which had not been fully presented to the Commission for its consideration before the Report and Order was adopted.

85. A majority of the Commission sincerely believes that this decision serves the public interest. There is no easy or clear-cut solution to the many problems involved. For the reasons given in the September, 1961 Report and Order and as further stated herein, we adhere to our decision in all respects. We further reaffirm the conclusion that we are unable to determine that higher power is warranted at this time but that -- if it proves to be in the public interest at some future date -- we have retained freedom of action on a sufficient number of channels which, in the combination carefully selected, will enable the claimed benefits of higher power to be realized.

86. Upon our re-examination several minor typographical errors have been discovered. In view of the public notice of clarification released October 27, 1961, and reading the Report and Order in its entirety, we do not believe parties will be misled. For example, 890 kc was inadvertently omitted from paragraph 35. However, it correctly appears in paragraph 37 and in the Rules in Sections 3.22 and 3.25 (a) (1). The one correction in this regard, to which we invite special attention is the reference in the Appendix (Instruction No. 8) to a paragraph 3.182(c). No such section appears in the rules and the reference thereto should be omitted.

87. We have carefully considered all petitions filed. We have, perhaps, included more detail than was necessary but deemed it desirable to discuss those new arguments raised by the parties. However, as noted, we have found nothing to warrant different disposition of the basic

premises and conclusions of the proceeding and no reason to re-examine arguments which were before us and considered by us before reaching our decision in this docket.

88. Several parties filed Oppositions to various of the Petitions for Reconsideration. While we have not made specific reference to such oppositions we have considered the arguments presented which, in many instances, are the same as those reasons relied upon by the Commission.

89. In view of the foregoing, IT IS ORDERED, This 21st day of Nov., 1962, That the Petitions for stay, partial stay, rehearing, reconsideration and partial reconsideration, listed in the Appendix hereto, ARE DENIED except that those filed by Inter-Cities Broadcasting Company, Lake Huron Broadcasting Corp., S & W Enterprises, Inc. et al., Sands Broadcasting Corp. et al., and West Side Radio ARE DISMISSED AS MOOT to the extent that the relief requested therein has already been granted by the Commission on its own motion in the Supplement to Report and Order released herein on November 1, 1961 and the Further Supplement to Report and Order adopted January 31, 1962.

FEDERAL COMMUNICATIONS COMMISSION*

Attachment

Ben F. Waple
Acting Secretary

Released: November 28, 1962

*See attached dissenting statement of Commissioner Lee.

[4947]

APPENDIX

A. Petitions for Reconsideration

1. American Broadcasting Company
2. Atlanta Newspapers, Inc. (WSB, Atlanta, Ga.)
* 3. Columbia Broadcasting System, Inc.
4. Clear Channel Broadcasting Service (CCBS)
5. Creek County Broadcasting Company, et al. (Applicants for 1220 kc

6. Earle C. Anthony, Inc. (KFI, Los Angles, Calif.)
7. Genesee Broadcasting Corp. (WHAM, Rochester, N. Y.)
8. The Goodwill Stations, Inc. (WJR, Detroit, Mich.)
9. Harvey Radio Laboratories, Inc., et al. (Applicants for 670, 720 and 820 kc)
10. Inter-Cities Broadcasting Co. (Applicant for 1220 kc)
11. Lake Huron Broadcasting Corp. (Applicant for 1070 kc)
12. Meredith Broadcasting Co.
13. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)
14. National Association of Educational Broadcasters
15. National Broadcasting Company, Inc.
* 16. John Poole Broadcasting Co., Inc. (KBIG, Avalon, Calif.)
17. Sands Broadcasting Corp., et al. (Applicants for 1150 kc)
18. Seattle, Portland & Spokane Radio (KXL, Portland, Oregon)
19. S & W Enterprises, Inc., et al. (Applicants for 900 kc)
20. Westinghouse Broadcasting Company, Inc.
21. West Side Radio (Applicant for 710 kc)
22. WGN, Inc. (WGN, Chicago, Ill.)

B. Petitions for Stay

1. Clear Channel Broadcasting Service (CCBS)
2. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)

C. Oppositions to Petitions for Reconsideration or for Stay

1. All-Alaska Broadcasters, Inc. (KFAR, Fairbanks, Alaska)
2. Atlanta Newspapers, Inc. (WSB, Atlanta, Ga.)
3. City of New York Municipal Broadcasting System (WNYC, New York)
4. Clear Channel Broadcasting Service (CCBS)
5. Crowell-Collier Broadcasting Corporation (KFWB, Los Angeles, Calif.)
6. Iowa State University of Science and Technology (WOI)
7. Marietta Broadcasting, Inc. (KFMB, San Diego, Calif.)
8. Midwest Radio-Television, Inc. (WCCO, Minneapolis, Minn.)
9. National Broadcasting Company, Inc.

10. Seattle, Portland & Spokane Radio (KXL, Portland, Oregon)

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* Included request for a stay.

[4948]

DISSENTING STATEMENT OF COMMISSIONER ROBERT E. LEE

I dissent to the action taken by the Commission in refusing to reconsider its action in this proceeding for substantially the same reasons that I gave in my dissent in the Report and Order adopted September 13, 1961, wherein I stated that no substantial improvement in service throughout the United States can be expected unless higher power is authorized to Class I stations. It is clear that the licensing of special Class II-A stations on roughly half of the clear channels will not make a significant contribution towards serving nighttime "white areas" and will serve to inhibit future efficient use of these channels by Class I stations.

The resolution passed by the House of Representatives in 1961 favored a year moratorium to permit Class I stations to file applications for increased power and after a year these channels could be duplicated. While I am pleased that the House of Representatives did not impose legislation in matters where the Commission is presumed to be expert, as I see it the form of action -- a resolution rather than a bill -- was an act of deference to Commission authority. It should be treated accordingly. By only passing reference is consideration shown to the very essence of the resolution, that being the matter of higher power for Class I stations and duplication by Class II stations on the same frequencies. There is no reason given in the Opinion or known to me why higher power and duplication on the same channels must be considered only in the alternative.

The Memorandum Opinion and Order adopted by the majority reevaluates the 1961 Report and Order to the extent that it gives reasons why some channels are better suited for duplication than for future consideration for higher power. It is my position that no hairline decision need or should be made. Our international treaty obligations certainly must be given consideration and full effect. Adjacent channel stations must be afforded their rights. It is my view that the fair and orderly way to evaluate these matters is to afford Class I stations the opportunity to file applications for powers in excess of 50 kw and then on the basis of these applications to determine from these concrete proposals, which in many instances would require directional antennas, whether they would satisfy the traditional public interest criteria. I am not convinced that adjacent channel interference problems cited by the majority as an inhibition to higher power would be of significant import, particularly in view of the fact that adjacent channel interference constitutes a substitution of service. Where and how does the public lose service? I submit that we are sparring with windmills.

F.C.C. FORM NO. 352
REV. JANUARY, 1951

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

File No. BR-331
Call Letters WJR

MAIN TRANSMITTER

STANDARD BROADCAST STATION LICENSE

Subject to the provisions of the Communications Act of 1934, subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this license, 1/ the LICENSEE

THE GOODWILL STATIONS, INC.

is hereby authorized to use and operate the radio transmitting apparatus hereinafter described for the purpose of broadcasting for the term beginning October 1, 1961, and ending October 1, 1964 (3 a.m., Eastern Standard Time)

The licensee shall use and operate said apparatus only in accordance with the following terms:

1. On a frequency of 760 kc.
2. With 50 kilo watts power non directional antenna nighttime ~~antenna~~ current, ~~23.06~~ amperes; ~~antenna~~ resistance, 94 ohms
and 50 kilo watts power non directional antenna daytime ~~antenna~~ current, ~~23.06~~ amperes; ~~antenna~~ resistance, 94 ohms
3. During the following period or periods of time:

Unlimited Time.

Transmitter may be operated by remote control from 21st floor, Fisher Building, 3011 West Grand Boulevard, Detroit, Michigan.

Operation under this renewal is subject to whatever interference may be caused to Station WJR, outside of its 0.5 mv/m 50% skywave contour, by a co-channel unlimited time Class II station assigned to San Diego, Calif., pursuant to the Report and Order in Docket No. 6741 adopted September 13, 1961.

4. With the station located at:
Detroit, Michigan

5. With the main studio located at:
21st Floor, Fisher Bldg., 3011 W. Grand Blvd.
Detroit, Michigan

The apparatus herein authorized to be used and operated is located at:

Wyandotte, S.W. Corner of Sibley and Grange Road, Approx. 10 mi. south of Detroit, Michigan

	°	'	"
North Lat.	42	10	07
West Long.	83	13	00

and is described as follows:

CONTINENTAL ELECTRONICS MFG. CO., Type 317 B, Broadcasting Transmitter.

Obstruction marking specifications in accordance with paragraphs 1, 3, 6, 15 and 21 of FCC Form 715 attached.

The Commission reserves the right during said license period of terminating this license or making effective any changes or modification of this license which may be necessary to comply with any decision of the Commission rendered as a result of any hearing held under the rules of the Commission prior to the commencement of this license period or any decision rendered as a result of any such hearing which has been designated but not held, prior to the commencement of this license period.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by section 606 of the Communications Act of 1934.

1/ This license consists of this page and pages ___ ___.

Dated this ___th day of October, 1961

FEDERAL COMMUNICATIONS COMMISSION,

DEC 8 1961

Ben F. Waple
Acting Secretary

F.C.C. - Washington, D. C.

603-604

FCC Form 715
February 1960

[5033]

ANTENNA TOWER(S) OR SUPPORTING STRUCTURE(S)

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

1 Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be equal and approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 40 feet nor less than 1-1/2 feet in width. All towers shall be cleaned or repainted as often as necessary to maintain good visibility.

2 There shall be installed at the top of the tower at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. The two lights shall burn simultaneously from sunset to sunrise and shall be positioned so as to insure unobstructed visibility of at least one of the lights from aircraft at any angle of approach. A light sensitive control device or an astronomic dial clock and time switch may be used to control the obstruction lighting in lieu of manual control. When a light sensitive device is used it should be adjusted so that the lights will be turned on at a north sky light intensity level of about thirty-five foot candles and turned off at a north sky light intensity level of about fifty-eight foot candles.

3 There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 500- or 620-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to one-half of the luminous period.

4 At approximately one-half of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

5 At approximately two-fifths of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

6 On levels at approximately two-thirds and one third of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

7 On levels at approximately four-sevenths and two-sevenths of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

8 On levels at approximately three-fourths, one-half and one-fourth of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

9 On levels at approximately two-thirds, four-ninths and two-ninths of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

10 On levels at approximately four-fifths, three-fifths, two-fifths, and one-fifth of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

11 At the approximate mid point of the over-all height of the tower there shall be installed at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS, or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

12 On levels at approximately two-thirds and one-third of the over-all height of the tower, there shall be installed at least two 100-, 107-, 111 or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

13 On levels at approximately three-fourths and one-fourth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

14 On levels at approximately four-fifths, three-fifths and one-fifth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

15 On levels at approximately five-sixths, one-half, and one-sixth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

16 On levels at approximately six-sevenths, five-sevenths, three-sevenths and one-seventh of the over-all height of the tower at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

17 On levels at approximately seven-eighths, five-eighths, three-eighths, and one-eighth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

18 On levels at approximately eight-ninths, seven-ninths, five-ninths, one-third and one-ninth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

19 On levels at approximately nine-tenths, seven-tenths, one-half, three-tenths, and one-tenth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

20 All lighting shall be exhibited from sunset to sunrise unless otherwise specified.

21 All lights shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

22 During construction of an antenna structure, for which obstruction lighting is required, at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes, shall be installed at the uppermost point of the structure. In addition, as the height of the structure exceeds each level at which permanent obstruction lights will be required, two similar lights shall be installed at each such level. These temporary warning lights shall be displayed nightly from sunset to sunrise until the the permanent obstruction lights have been installed and placed in operation, and shall be positioned so as to insure unobstructed visibility of at least one of the lights at any angle of approach. In lieu of the above temporary warning lights, the permanent obstruction lighting fixtures may be installed and operated at each required level as each such level is exceeded in height during construction.

THIS FORM IS A PART OF AND SHALL BE ATTACHED TO THE CURRENT INSTRUMENT OF AUTHORIZATION

F.C.C. - Washington, D. C.

[5045]

PETITION FOR WAIVER OF RULES AND FOR ACCEPTANCE OF APPLICATION

The Goodwill Stations, Inc., by its attorneys and pursuant to Sections 1.15 and 1.307(a) of the Commission's Rules and Regulations, hereby requests that all pertinent provisions of the Commission's Rules and Regulations, including Sections 1.354, 3.21(a)(1) and 3.24(g), be waived and that the above-entitled application, which is being filed simultaneously herewith, be accepted for filing. 1/ In support thereof, it is stated as follows:

I. Rule 1.354

1. By a Report and Order released May 10, 1962, the Commission amended Rule 1.354 so as to place an immediate "freeze"

1/ The pertinent provisions of the above-cited sections of the Commission's Rules and Regulations are reproduced in Appendix A hereof.

[5046]

on the acceptance for filing of standard broadcast applications except for specified categories. (23 RR 1545.) The Report and Order recited that the Commission had found it "necessary to bring a temporary, partial halt to our acceptance of applications for new and changed facilities" in order "to restudy the standards under which we consider new and changed assignments". The Report and Order explained that by means of numerous grants of applications for new and changed facilities made in compliance with the current rules and standards, the Commission has been able to cure what it considered to be two of the three principal deficiencies of standard broadcast service, 2/ but that no significant cure has been effectuated regarding the third deficiency, the existence of "substantial 'white' areas in the Northeast, Midwest, South and Far West". The Report and Order emphasized that "[t]he outlying areas which lacked primary service in 1946 have been reduced only a minute degree by the continual flow of new assignments". 3/

[5045]

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1/ The pertinent provisions of the above-cited sections of the Commission's Rules and Regulations are reproduced in Appendix A hereof.

2/ The "lack of any local outlets in many communities of substantial size" and the "absence of competing local stations in communities that did not have a facility".

3/ Further, the Report and Order emphasized that the "continual flow of new assignments" and "the creation of multi-station markets has led to a derogation of engineering standards, so that a service rendered by existing stations in the outermost regions of their normally protected service areas has been impaired * * *." The Commission also noted that "future power increases to extend the interference-free contour over growing suburban populations are often rendered impossible, and the available channels for the establishment of new stations in growing under-served areas have been continually reduced in number."

2. It is thus clear that the essential reason for imposing the present AM freeze was the realization that granting of applications for new and changed facilities in the standard broadcast band under the current rules and standards has not resulted in any significant improvement of AM radio service to the millions of rural and small town Americans living in areas which do not receive a single acceptable nighttime groundwave service.

3. The previous recognition by the Commission of the "white" area problem led to the institution on February 20, 1945, of the so-called Clear Channel proceeding (Docket 6741). The February 20, 1945 Notice of Hearing recited that"there are still large areas of the continental United States which have no radio service during the day and no primary radio service at night". The accompanying Commission press release stated to the same effect that "a re-examination of present clear channel allocations is necessary since Commission studies reveal there are still large areas within the United States which receive no radio service at all during the daytime hours and no primary radio service at night". FCC Chairman Denny stated in 1946 that the purpose of the Clear Channel hearing was "to canvass the situation and see what can be done about filling in those blank spots so that we will have full nation-wide coverage of all states and all communities, which is the Commission's objective in this proceeding."

(Docket 6741, R. 3922.) 4/ Chairman Denny also stated that it was "the Commission's earnest hope * * * that the individual parties * * * will come forward with constructive plans, looking towards whatever adjustments can be made to cover these white areas." (Ibid, R. 1827.) 5/

4. The accuracy of the statement in the Commission's Report and Order released May 10, 1962 imposing the present AM freeze that the post World War II "tremendous proliferation of stations has occurred without significant reduction of 'white' areas" is graphically demonstrated by the fact that the addition of some 536 fulltime stations between May of 1947 and January of 1957 reduced the "white" area insignificantly (from 60.59% to 57.99%) while at the same time the "white" area population increased from some 23.2 million to some

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4/ Section 1 of the Communications Act of 1934, as amended, provides in pertinent part that the primary purpose for creating the Federal Communications Commission was "to make available, so far as possible, to all the United States a rapid, efficient, nation-wide and world-wide wire and radio communications service * * *." (Emphasis added). Section 1 also emphasizes the importance of furthering the national defense by means of regulating interstate and foreign commerce in communications by wire and radio.

5/ In the Docket 6741 hearing, the only concrete proposal advanced in response to Chairman Denny's request was the CCBS proposal to authorize all Class I-A stations to operate with power in excess of 50 kw. The "white" area problem was also the principal reason for the Clear Channel hearings held in 1936 (FCC Docket 4063) and 1938 (FCC Docket 5072-A).

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25.6 million (Docket 6741, Third Notice released September 22, 1959, paragraph 10, 24 F. R. 7737). Although the bulk of the "white" area (74.8%) lies west of the Mississippi River, the bulk of the "white" area population (71.3%) lives east thereof (Ibid).

5. The Commission, based on the record evidence compiled in the Docket 6741 Clear Channel hearing, correctly concluded that

"improvement of nighttime service throughout most of the existing white areas must be provided, if at all, by new or improved skywave service" (Further Notice of Proposed Rule Making released April 15, 1958 in Docket 6741, paragraph 41, 23 F. R. 2612). In spite of this conclusion, the Commission on September 14, 1961 released a Report and Order in Docket 6741 looking toward authorizing fulltime Class II stations on 14 Class I-A channels and reserving for the future a decision as to whether Class I-A stations should be authorized to operate with higher power (21 RR 1801). The locations of the existing 14 Class I-A stations and the 14 proposed Class II fulltime stations are shown below:

Frequency (kc)	Class I-A Station	Location of Proposed 6/ Class II Station
1. 670	WMAQ, Chicago, Ill.	Idaho
2. 720	WGN, Chicago, Ill	Nevada or Idaho
3. 750	WSB, Atlanta, Ga.	Anchorage, Alaska
4. 760	WJR, Detroit, Mich.	San Diego, Calif.
5. 770	WABC, New York City	Albuquerque, N. M
6. 780	WBBM, Chicago, Ill.	Nevada
7. 880	WCBS, New York City	N. D., S. D. or Nebr.

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Frequency (kc)	Class I-A Station	Location of Proposed Class II Station
8. 890	WLS, Chicago, Ill	Utah
9. 1020	KDKA, Pittsburgh, Pa.	New Mexico
10. 1030	WBZ, Boston, Mass.	Wyoming
11. 1100	KYW, Cleveland, Ohio	Colorado
12. 1120	KMOX, St. Louis, Mo.	Calif. or Oregon
13. 1180	WHAM, Rochester, N.Y.	Montana
14. 1210	WCAU, Philadelphia, Pa.	Kansas, Nebr. or Okla.

6. An engineering study prepared for the Clear Channel Broadcasting Service (CCBS), of which petitioner is a member, demonstrated that 11 of the above-noted proposed Class II stations (excluding the

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6/ KOB, Albuquerque, has been operating on 770 kc since 1941. The proposed Class II stations on 750 kc and 760 kc are existing stations (KFQD, Anchorage and KFMB, San Diego).

existing stations in Anchorage, San Diego and Albuquerque) would provide no nighttime skywave service at all and could be expected to provide interference-free nighttime groundwave service to only 41,582 square miles of "white" area (or 2.41% of the 1,725,095 square miles of "white" area which existed as of 1957 7/) and to only 234,575 "white" area residents (or 0.916% of the 1957 "white" area population of 25.6 million people). 8/ (See Engineering Statement dated October 16, 1961 attached to CCBS Petition for Rehearing filed October 16, 1961 in Docket 6741).

7. If KFMB were to operate on 760 kc as proposed in the above-noted Report and Order released September 14, 1961, it would not provide nighttime primary service to any area and population not now receiving nighttime primary service (see Engineering Statement dated October 15, 1961 attached to Petition for Reconsideration filed October 16, 1961 by The Goodwill Stations, Inc. in Docket 6741).

8. The above-noted statistics as to the insignificant degree to which service to "white" areas would be improved by implementation of the above-noted duplication of a majority of the Class I-A frequencies demonstrates the validity of the above-cited April 15, 1958 conclusion of the Commission that improvement of nighttime service to existing "white" areas must be provided by improved skywave service.

7/ Recent studies made by CCBS show that as of September 13, 1961, the "white" area consists of 1,726,293 square miles or 58.03% of the land area of the continental United States and that the "white" area population totals 25,106,079.

8/ In testimony given February 13, 1962 before a subcommittee of the House Committee on Interstate and Foreign Commerce on H. R. 8210, et al., Chairman Minow testified that the Commission's staff estimated that the 11 proposed new stations would provide a first nighttime primary service to "at least 600,000 persons" (page 235). Even if this estimate is accepted, it is obvious that the improvement of service to nighttime "white" areas and populations would be insignificant.

9. Principally because of the above-noted facts, the House Subcommittee on Communications and Power of the Committee on Interstate and Foreign Commerce held hearings on February 1, 2 and 13, 1962 on various bills looking toward the prohibition of the duplication of Class I-A frequencies and the authorization of higher power for Class I-A Clear Channel stations. On July 2, 1962, the House of Representatives passed House Resolution 714 which had been

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reported out unanimously by the House Committee on Interstate and Foreign Commerce following the above-noted hearings (108 Cong. Rec. 11678-11686).

10. H. Res. 714 is set forth in full in Appendix B hereof. In essence, it provides that the Commission (1) may authorize power in excess of 50 kw with respect to any of the existing Class I-A Clear Channel stations notwithstanding the provisions of Senate Resolution 294 adopted June 7, 1938 and (2) should not authorize for a period of one year any additional fulltime stations on any of the existing Class I-A Clear Channel frequencies.

11. The Committee Report accompanying H. Res. 714 (Report No. 1954, 87th Congress, 2d Session) stated that the above-noted one year moratorium was imposed for the twofold purpose of (1) giving the Commission an opportunity to reconsider its September 14, 1961 Report and Order in Docket 6741 and (2) giving all Class I-A Clear Channel stations an opportunity to file applications for power in excess of 50 kw. The House Report referred to the fact that " * * * the Committee was greatly impressed with engineering testimony * * * that operations with power in excess of 50 kilowatts would greatly benefit large areas and populations which do not have available to them any adequate nighttime radio service." The Report also emphasized the fact that the Committee received testimony from a spokesman on behalf

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of the Department of Defense "who stated' * * * we favor increased power and clear channel operation to aid in survivable communications'".

12. The instant application seeks authority to increase the operating power of WJR, a Class I-A station which operates on 760 kc at Detroit, Michigan, from 50 kw to 750 kw. As shown by the engineering exhibit attached to the application, the area encompassed within the WJR 0.5 mv/m daytime and nighttime groundwave contours would be increased from 61,800 square miles to 95,900 square miles. The 34,100 square miles which would be encompassed for the first time within the WJR 0.5 mv/m groundwave contour lie in the states of Michigan, Ohio, Indiana, Illinois (see Figure 13 and Sheet 5 of Figure 10). The WJR 0.5 mv/m groundwave population would be increased from 10,775,000 to 13,874,000 or a gain of 3,099,000 (Ibid).

13. The area encompassed within the WJR 0.5 mv/m 50% nighttime skywave contour would be increased by 1,059,000 square miles (from 1,084,000 to 2,143,000 square miles) and the population within this contour would be increased by 21,710,000 (from 126,190,000 to 147,900,000 of which 6,082,627 living in 511,000 square miles would receive objectionable interference if the pending KFMB application (BMP-9905) were granted) (Ibid).

14. As shown on Sheet 4 of Figure 11 of the Engineering Statement, the proposed WJR operation at 750 kw would bring an

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improved skywave service to residents of all of the states of the United States with the exception of California, Florida, Nevada, Oregon and Washington. 9/

15. It is thus apparent that the instant WJR application to increase power to 750 kw would improve significantly the service now afforded to "white"areas and is therefore in full compliance with the provisions of H. Res. 714 passed July 2, 1962. Further, the operation

of WJR with power of 750 kw would comply with the Department of Defense's position of favoring "increased power and clear channel operation to aid in survivable communications"; would be of vital importance in assisting Civilian Defense Agencies in accomplishing their mission of alerting and informing the American public in times of national disasters and emergencies; and would result in stronger, more reliable nighttime signals to Latin Americans, thus making it possible to bring about a better understanding between the United States and our neighbors to the south.

16. It is respectfully submitted that the above-recited facts constitute good cause and justification for waiving the pertinent

provisions of Rule 1.354, especially in view of the fact that the freeze was imposed for the primary reason of enabling the Commission to take steps to improve service to "white" areas (U.S. v. Storer Broadcasting Co., 351 U.S. 192).

II. Rule 3.21(a)(1)

17. It is respectfully submitted that the matters set forth in Part I above likewise constitute good cause and justification for waiving the provision of Rule 3.21 that limits the operating power of Class I stations to 50 kw.

III. Rule 3.24(g)

18. Rule 3.24(g) provides in pertinent part that the population within the 1 v/m contour may not exceed 1% of the population within the 25 mv/m contour. As shown in Figure 13 of the Engineering

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9/ The January 1, 1957 "white" areas and populations for each of the states of the United States are tabulated in Exhibits 4 and 5 of the Comments of the Clear Channel Broadcasting Service filed August 15, 1958 in Docket 6741, which are reproduced as Appendices C and D hereof. The interference which would be caused to the proposed WJR 0.5 mv/m 50% skywave contour by the proposed KFMB operation on 760 kc would occur in the states of Montana, Wyoming, Utah, Colorado, Arizona, New Mexico, Texas, Oklahoma and Idaho.

Statement attached to the instant application, there would be a population of 142,800 within the proposed 1 v/m contour, which is 2.81% of the population (5,075,000) within the 25 mv/m contour. It is respectfully submitted that the matters set forth (1) in Part I hereof and (2) on pages 2 and 3 of the above-noted Engineering Statement constitute good cause and justification for waiving the provisions of this rule.

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IV. Other Rules

19. In the event the Commission determines that the subject application is patently not in accordance with any Commission rule, regulation or requirement in addition to the ones specifically enumerated above, it is respectfully submitted that the matters set forth in Part I hereof constitute good cause and justification for waiving the provisions of any such rules, regulations or other requirements.

WHEREFORE, the premises considered, it is respectfully requested that the provisions of Rules 1.354, 3.21(a)(1), 3.24(g) and any other rule, regulation or requirement which the Commission determines is patently not complied with by the subject WJR application be waived and the application of The Goodwill Stations, Inc. filed simultaneously herewith seeking authority to increase the operating power of Class I-A station WJR from 50 kw to 750 kw be accepted for filing.

Respectfully submitted,
THE GOODWILL STATIONS, INC.

By____________________
Reed T. Rollo

____
R. Russell Eagan
of
Kirkland, Ellis, Hodson, Chaffetz
& Masters
800 World Center Building
Washington 6, D. C.
Its Attorneys

October 22, 1962

APPENDIX A

Pertinent Provisions of FCC Rules and Regulations

1. Rule 1.15:

"Suspension, amendment or waiver of rules. -- The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."

2. Rule 1.307(a):

"Defective applications. -- (a) Applications which are determined to be patently not in accordance with the Commission's rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed. Requests for waiver shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof."

3. Rule 1.354:

"Processing of standard broadcast applications. -- (a) Applications for standard broadcast facilities are divided into two groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations i.e., any change in frequency, power, hours of operation, or station location ***"

***

"NOTE: Pending the Commission's re-study of the rules pertaining to allocation of standard broadcast

facilities, requests for standard broadcast authorizations will be considered as set forth in paragraphs (a) and (b) of this note, notwithstanding any provisions of this chapter to the contrary.

(a) Applications for new standard broadcast stations or for major changes in the facilities of existing stations on the frequencies specified in §§3.25, 3.26, and 3.27 of this chapter, will be accepted for filing only when the applications fall within the following categories:

(1) Applications requesting authority to increase power of existing Class IV stations on local channels from 250 watts, not to exceed 1 kilowatt, or, from 100 watts to 250 watts or 500 watts.

(2) Applications for new Class II-A stations specified in § 3.22 of this chapter.

(3) Applications for other facilities, except new 100 watt Class IV proposals, where a showing has been submitted to demonstrate that the proposed operation (i) would bring a first interference-free primary service, day or night, to at least 25% of the area or 25% of the population within the proposed interference-free service contour; and (ii) would not cause any objectionable interference to existing stations, and would not involve prohibited overlap as specified in §3.37 of the Rules with existing stations.

(b) Applications for standard broadcast facilities now pending will be processed and acted upon in normal course. Applications for new stations or for major changes in existing stations tendered for filing after May 10, 1962, which are not consistent with the interim criteria, will be returned to the applicant."

4. Rule 3.21(a)(1):

"Classes of standard broadcast channels and stations. -- (a) Clear Channel. A clear channel is one on which the dominant station or stations render service over wide areas, and which are cleared of objectionable interference within their primary service areas and over all or a substantial portion of their secondary service areas. Stations operating on these channels are classified as follows:

(1) Class I station. A Class I station is a dominant station operating on a clear channel and designed to render primary and secondary service over an extended area and at relatively long distances. Its primary service area is free from objectionable interference from other stations on the same and adjacent channels, and its secondary service area free from interference except from stations on adjacent channels, and from stations on the same channel in accordance with the channel designation in §§3.25 or 3.182. The operating power shall not be less than 10 kilowatts nor more than 50 kilowatts."

5. Rule 3.24(g):

"Broadcast facilities; showing required. -- An authorization for a new standard broadcast station or increase in facilities of an existing station will be issued only after a satisfactory showing has been made in regard to the following, among others:"

***

"(g) That the population within the 1 v/m contour does not exceed 1.0 per cent of the population within the 25 mv/m contour: Provided, however, that where the number of persons within the 1 v/m contour is 300 or less the provisions of this subparagraph are not applicable."

APPENDIX B

H. Res. 714, As Passed July 2, 1962

Resolved, That it is the sense of the House of Representatives that the Federal Communications Commission --

(1) may, notwithstanding Senate Resolution 294, Seventy-fifth Congress, third session, adopted June 7, 1938, authorize the use of power in excess of fifty kilowatts on any of the twenty-five class I-A clear channel frequencies in the standard broadcast band (five hundred and forty to sixteen hundred kilocycles) which are specified in the rules of the Commission, if, after consideration of all pertinent factors, including the objective of providing improved nighttime radio service to substantial areas and populations presently receiving inadequate nighttime radio service, the Commission finds that operation on such frequencies with power in excess of fifty kilowatts will serve the public interest, convenience, or necessity; and

(2) should not authorize, for a period of one year from the date of adoption of this resolution, the construction for nighttime operation, or the nighttime operation, of any station on any of the twenty-five class I-A clear channel frequencies in the standard broadcast band (five hundred and forty to sixteen hundred kilocycles) which are specified in the rules of the Commission, unless such station was or could have been authorized consistent with the rules of the Commission then in effect, to operate on such a frequency on July 1, 1961.

[5062]

APPENDIX C

EXTENT OF WHITE AREAS AS OF JANUARY 1, 1957 1/

State	White Area (Sq. Miles)	Rank By Area	Rank By Population
1. Alabama	43,580	13	2
2. Arizona	104,470	3	27
3. Arkansas	41,287	16	10
4. California	89,723	5	16
5. Colorado	66,489	10	29
6. Connecticut	393	45	43
7. Delaware	376	46	44
8. Florida	37,770	18	12
9. Georgia	42,949	15	6
10. Idaho	66,810	9	31
11. Illinois	1,786	41	39
12. Indiana	781	42	45
13. Iowa	639	44	42
14. Kansas	43,206	14	24
15. Kentucky	10,142	36	13
16. Louisiana	18,969	33	14
17. Maine	25,878	25	21
18. Maryland	2,874	40	33
19. Massachusetts	660	43	46
20. Michigan	30,256	21	19

1/ Reproduction of Exhibit 4 of CCBS Comments filed August 15, 1958 in Docket 6741.

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State	White Area (Sq. Miles)	Rank By Area	Rank By Population
21. Minnesota	27,108	24	23
22. Mississippi	33,276	19	4
23. Missouri	29,353	22	15

State	White Area (Sq. Miles)	Rank By Area	Rank By Population
24. Montana	107,585	2	28
25. Nebraska	48,602	12	17
26. Nevada	104,382	4	40
27. New Hampshire	6,499	38	34
28. New Jersey	None	48	47
29. New Mexico	97,735	5	25
30. New York	15,728	34	18
31. North Carolina	33,002	20	1
32. North Dakota	13,197	35	41
33. Ohio	4,409	39	30
34. Oklahoma	25,830	26	26
35. Oregon	81,480	8	22
36. Pennsylvania	23,635	27	3
37. Rhode Island	324	47	48
38. South Carolina	23,061	28	5
39. South Dakota	38,069	17	35
40. Tennessee	20,370	31	7
41. Texas	127,990	1	11
42. Utah	53,073	11	38
43. Vermont	7,168	37	32
44. Virginia	28,208	23	8
45. Washington	20,796	30	37
46. West Virginia	19,075	32	9
47. Wisconsin	22,058	29	20
48. Wyoming	84,044	7	36

Total 1,725,095 (57.99% of the total land area of the U.S. *)

West of Long 96° 1,154,223 (38.80% of the total land area of the U.S.)

East of Long. 96° 570,872 (19.19% of the total land area of the U.S.)

West of Miss. River 1,290,837 (43.39% of the total land area of the U.S.)

East of Miss. River 434,258 (14.60% of the total land area of the U.S.)

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* Both the 1940 and 1950 Census list the total gross area (land and water) of the continental United States as 3,022,387 square miles. The total land area of the continental United States is 2,974,726 square miles (Statistical Abstract of the U. S., 1957, table 195, page 158). Table III of Exhibit 339 shows that as of May 1, 1947, the total amount of white area was 1,802,665 square miles or 60.59% of the total land area. The above-noted January 1, 1957 white area (1,725,095 square miles) represents 57.99% of the total land area. Thus, although the number of fulltime stations was increased from a total of 1,339 as of May 1, 1947 to a total of 1,875 as of January 1, 1957, the white area was reduced by only 2.6%. As shown in Exhibit 5, the white area population was increased during the same time by 2,379,059.

[5065]

APPENDIX D

EXTENT OF WHITE AREA POPULATIONS 1/ AS OF MAY 1, 1947 AND JANUARY 1, 1957

State	5/1/47	1/1/57	1947 Rank	1957 Rank
1. Alabama	1,704,400	1,725,092	2	2
2. Arizona	144,800	304,118	35	27
3. Arkansas	1,007,000	1,078,360	10	10
4. California	187,600	592,039	31	16
5. Colorado	239,800	260,798	25	29
6. Connecticut	57,200	None	41	43
7. Delaware	22,000	None	43	44
8. Florida	669,400	738,819	14	12
9. Georgia	1,354,400	1,496,526	5	6
10. Idaho	206,700	233,043	28	31
11. Illinois	76,700	90,087	39	39
12. Indiana	None	None	47	45
13. Iowa	10,500	16,351	46	42
14. Kansas	379,100	346,664	20	24
15. Kentucky	647,500	720,323	15	13
16. Louisiana	756,100	710,257	12	14
17. Maine	332,400	505,253	21	21
18. Maryland	182,000	203,800	32	33

State	5/1/47	1/1/57	1947 Rank	1957 Rank
19. Massachusetts	19,000	None	44	46
20. Michigan	456,900	520,632	18	19

1/ Reproduction of Exhibit 5 of CCBS Comments filed August 15, 1958 In Docket 6741.

[5066]

State	5/1/47	1/1/57	1947 Rank	1957 Rank
21. Minnesota	233,700	368,572	26	23
22. Mississippi	1,388,500	1,516,284	3	4
23. Missouri	756,100	705,509	13	15
24. Montana	290,400	264,773	23	28
25. Nebraska	293,300	560,709	22	17
26. Nevada	48,900	79,208	42	40
27. New Hampshire	213,900	150,780	27	34
28. New Jersey	None	None	48	47
29. New Mexico	284,200	322,016	24	25
30. New York	460,700	544,632	17	18
31. North Carolina	1,770,200	1,850,005	1	1
32. North Dakota	75,200	45,539	40	41
33. Ohio	146,100	237,504	34	30
34. Oklahoma	529,800	314,252	16	26
35. Oregon	195,400	401,575	29	22
36. Pennsylvania	1,362,900	1,581,495	4	3
37. Rhode Island	16,000	None	45	48
38. South Carolina	1,204,800	1,516,237	7	5
39. South Dakota	171,400	137,482	33	35
40. Tennessee	1,053,000	1,195,604	9	7
41. Texas	999,400	953,604	11	11
42. Utah	79,500	94,328	38	38

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State	5/1/47	1/1/57	1947 Rank	1957 Rank
43. Vermont	193,900	225,130	30	32
44. Virginia	1,337,200	1,136,938	6	8
45. Washington	86,000	131,392	37	37
46. West Virginia	1,068,900	1,098,802	8	9
47. Wisconsin	407,600	513,635	19	20
48. Wyoming	131,700	137,092	36	36
Total	23,252,200	25,631,259		
	(100%)	(100%)		
East of Long, 96°	19,579,200	20,997,626		
	(84.20%)	(81.92%)		
West of Long, 96°	3,673,000	4,633,633		
	(15.80%)	(18.08%)		
East of Miss. River	---	18,277,835		
		(71.31%)		
West of Miss. River	---	7,353,424		
		(28.69%)		

B
FCC 62-1209
27631

MEMORANDUM OPINION AND ORDER

By the Commission: Commissioner Lee dissenting and voting to grant.

1. The Commission has before it the above-captioned applications accompanied by petitions and/or requests for waiver of various Commission's Rules to permit the acceptance for filing of the applications.

2. The listed applicants are Class I-A Clear Channel stations presently operating at 50 kw of power and seeking an increase to 750 kw of power. In the Commission's Report and Order in the Clear Channel Matter (Docket No. 6741), adopted September 13, 1961,[1] the facilities of Stations WSM and WLW were not duplicated to permit the operation of a Class II-A station on the frequency, but were reserved for further study to determine what would be the optimum use of the frequency, i.e. should the frequency be duplicated or should the existing Clear Channel stations be authorized to operate with higher power. The frequency utilized by Station WJR was not reserved for future disposition, but was duplicated by providing

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[1] 31 F.C.C. 565, 21 R.R. 1801.

[5072]

that Station KFMB, San Diego, California would move to this frequency. The frequency utilized by Station WGN was to be duplicated in the States of Nevada, or Idaho.

3. By Memorandum Opinion and Order adopted this date, the Commission reaffirmed its Clear Channel Report and Order by denying the petitions for reconsideration directed against it, and also concluded that operation of the unduplicated Clear Channel stations with power in excess of 50 kw should not be authorized at this time.

4. Therefore, the controlling consideration with respect to the above-captioned applications is the disposition of the requests for waiver of Section 3.21(a)(1) of the Commission's Rules, the provisions of which limit operating power to 50 kw for Class I stations. The petitioners claim that House Resolution 714 of the 87th Congress authorized the Commission to permit operations with power in excess of 50 kw. This House Resolution reflects a view contrary to the 1938 Senate Resolution, but we cannot say that the House Resolution requires the Commission to authorize power in excess of 50 kw for Clear Channel stations upon the basis of applications such as these. In our opinion, orderly procedure would seem to require that the merits of authorizing use of power in excess of 50 kw be evaluated in a rule-making procedure previous to firm commitment to that course of action, and that the rules be amended to spell out the conditions and circumstances under which such operation may be authorized in the public interest if it is determined that such a course will serve this interest.

5. The Commission has indicated the desirability of further study before reaching a definite decision regarding higher power, and a further rule making procedure is a proper vehicle for such a study. It is suggested that the advocates of higher power, including prospective licensees, may more appropriately present their case by a petition for rule-making in the matter rather than by attempting to obtain consideration of individual applications inconsistent with present rules.

6. Returning to consideration of the instant applications, it is noted that Stations WSM, WGN, and WJR allege, as a basis for their request for waiver, that operation with 750 kw would be consistent with the Department of Defense position favoring increased power communications operations; would aid civil defense and disaster operations; and would provide better understanding between the United States and the Latin-American countries. These purposes are of course laudable, but we do not think that a showing has been made of sufficient force to override the requirements of orderly procedure. In short, it is the Commission's

view that there has not been a sufficient showing to warrant waiver of Section 3.21(a)(1) of the Rules, and accordingly, the applications will be returned to the applicants without prejudice.

7. The requests for waiver of Section 1.354 and Section 3.24(g)

of the Rules are moot due to the Commission's decision not to authorize operation with power in excess of 50 kw at this time. Therefore, these questions will not be discussed because our action in denying a waiver of Section 3.21(a)(1) is dispositive of the applications.

ACCORDINGLY IT IS ORDERED, That the request for waiver of Section 3.21(a)(1) of the Commission's Rules and acceptance of the above-captioned applications tendered for filing ARE DENIED; the above-captioned applications ARE HEREBY RETURNED; and the requests for waiver of Sections 1.354 and 3.24(g) of the Commission's Rules ARE MOOT.

FEDERAL COMMUNICATIONS COMMISSION

/s/ Ben F. Waple
Acting Secretary

Adopted: November 21, 1962

Released: November 27, 1962

[5145]
F.C.C. FORM NO. 352
REV. JANUARY, 1951

File No. BR-560
Call Letters WGN
5145

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

STANDARD BROADCAST STATION LICENSE

MAIN TRANSMITTER

Subject to the provisions of the Communications Act of 1934, subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this license, 1/ the LICENSEE

WGN, INCORPORATED

is hereby authorized to use and operate the radio transmitting apparatus hereinafter described for the purpose of broadcasting for the term beginning January 3, ~~(3 a.m., Eastern Standard Time)~~, 1962 and ending December 1, (3 a.m., Eastern Standard Time), 1964

The licensee shall use and operate said apparatus only in accordance with the following terms:

1. On a frequency of 720 kc.
2. With 50 kilo watts power non directional antenna nighttime [*Antenna current, 24.6 amperes; Antenna resistance, 82.5 ohms]
and 50 kilo watts power non directional antenna daytime [*Antenna current, 24.6 amperes; Antenna resistance, 82.5 ohms]
3. During the following period or periods of time:

Unlimited time.

*Auxiliary antenna operation:
Antenna current, 66.8 amperes - Night & Day
Antenna resistance, 11.2 ohms - Night & Day

Obstruction marking specifications for Auxiliary Antenna in accordance with paragraphs 1, 3, 12 and 21 of FCC Form 715 attached.

4. With the station located at:

Chicago, Illinois

5. With the main studio located at:

2501 Bradley Place
Chicago 18, Illinois

Transmitter may be operated by remote control from Prudential Plaza, Room 4000, 130 East Randolph Drive, Chicago, Illinois (WGN-TV transmitter location).

The apparatus herein authorized to be used and operated is located at:

Route #1, Rohlwing Road
2½ miles southeast of
Schaumberg, Illinois

North Lat. 42° 00' 42"
West Long. 88 02 07

and is described as follows: RCA MFG. CO., Type No. BRA-50G, Broadcasting Transmitter. Antenna: Vertical radiator; height of vertical lead, 740'; overall height above ground level, 750'. Ground system consists of 120 radials 0.65 wave length long. Obstruction marking specifications in accordance with paragraphs 1,3,19(modified to require the side lights to be installed at the 650', 550', 450', 350' and 250' levels. In addition, two side lights shall be installed on diagonally opposite corners of tower at the 150' and 100' levels) and 21 of FCC Form 715 attached.

The Commission reserves the right during said license period of terminating this license or making effective any changes or modification of this license which may be necessary to comply with any decision of the Commission rendered as a result of any hearing held under the rules of the Commission prior to the commencement of this license period or any decision rendered as a result of any such hearing which has been designated but not held, prior to the commencement of this license period.

This license is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such broadcasting service as will serve public interest, convenience, or necessity to the full extent of the privileges herein conferred.

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein. Neither the license nor the right granted hereunder shall be assigned or otherwise transferred in violation of the Communications Act of 1934. This license is subject to the right of use or control by the Government of the United States conferred by section 606 of the Communications Act of 1934.

1/ This license consists of this page and pages 2.

Dated this 3rd day of January, 19 62

FEDERAL COMMUNICATIONS COMMISSION,

Ben F. Waple
Acting Secretary

APR 18 1962

F.C.C. - Washington, D. C.

MAIN TRANSMITTER

BR-560 W G N 1-3-62

AUXILIARY ANTENNA: 250' (254' overall height) triangular, self-supporting, series-excited vertical radiator.

AUXILIARY GROUND SYSTEM: Consists of 120 buried copper wire radials 400' long plus a 40' square copper ground screen.

FCC Form 715
February [illegible]

ANTENNA TOWER(S) OR SUPPORTING STRUCTURE(S)

It is to be expressly understood that the issuance of these specifications is in no way to be considered as precluding additional or modified marking or lighting as may hereafter be required under the provisions of Section 303(q) of the Communications Act of 1934, as amended.

1 Antenna structures shall be painted throughout their height with alternate bands of aviation surface orange and white, terminating with aviation surface orange bands at both top and bottom. The width of the bands shall be equal and approximately one-seventh the height of the structure, provided however, that the bands shall not be more than 40 feet nor less than 1-1/2 feet in width. All towers shall be cleaned or repainted as often as necessary to maintain good visibility.

2 There shall be installed at the top of the tower at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. The two lights shall burn simultaneously from sunset to sunrise and shall be positioned so as to insure unobstructed visibility of at least one of the lights from aircraft at any angle of approach. A light sensitive control device or an astronomic dial clock and time switch may be used to control the obstruction lighting in lieu of manual control. When a light sensitive device is used it should be adjusted so that the lights will be turned on at a north sky light intensity level of about thirty-five foot candles and turned off at a north sky light intensity level of about fifty-eight foot candles.

3 There shall be installed at the top of the structure one 300 m/m electric code beacon equipped with two 500- or 620-watt lamps (PS-40, Code Beacon type), both lamps to burn simultaneously, and equipped with aviation red color filters. Where a rod or other construction of not more than 20 feet in height and incapable of supporting this beacon is mounted on top of the structure and it is determined that this additional construction does not permit unobstructed visibility of the code beacon from aircraft at any angle of approach, there shall be installed two such beacons positioned so as to insure unobstructed visibility of at least one of the beacons from aircraft at any angle of approach. The beacons shall be equipped with a flashing mechanism producing not more than 40 flashes per minute nor less than 12 flashes per minute with a period of darkness equal to one-half of the luminous period.

4 At approximately one-half of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

5 At approximately two-fifths of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event this beacon cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

6 On levels at approximately two-thirds and one-third of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of it from aircraft at any angle of approach, there shall be installed two such beacons. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

7 On levels at approximately four-sevenths and two-sevenths of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

8 On levels at approximately three-fourths, one-half and one-fourth of the overall height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons, at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

9 On levels at approximately two-thirds, four-ninths and two-ninths of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed height.

10 On levels at approximately four-fifths, three-fifths, two-fifths, and one-fifth of the over-all height of the tower one similar flashing 300 m/m electric code beacon shall be installed in such position within the tower proper that the structural members will not impair the visibility of this beacon from aircraft at any angle of approach. In the event these beacons cannot be installed in a manner to insure unobstructed visibility of the beacons from aircraft at any angle of approach, there shall be installed two such beacons at each level. Each beacon shall be mounted on the outside of diagonally opposite corners or opposite sides of the tower at the prescribed heights.

11 At the approximate mid point of the over-all height of the tower there shall be installed at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS, or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

12 On levels at approximately two-thirds and one-third of the over-all height of the tower, there shall be installed at least two 100-, 107-, 111 or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes. Each light shall be mounted so as to insure unobstructed visibility of at least one light at each level from aircraft at any angle of approach.

13 On levels at approximately three-fourths and one-fourth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

14 On levels at approximately four-fifths, three-fifths and one-fifth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

15 On levels at approximately five-sixths, one-half, and one-sixth of the overall height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

16 On levels at approximately six-sevenths, five-sevenths, three-sevenths and one-seventh of the over-all height of the tower at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

17 On levels at approximately seven-eighths, five-eighths, three-eighths, and one-eighth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the structure.

18 On levels at approximately eight-ninths, seven-ninths, five-ninths, one-third and one-ninth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

19 On levels at approximately nine-tenths, seven-tenths, one-half, three-tenths, and one-tenth of the over-all height of the tower, at least one 100-, 107-, 111- or 116-watt lamp (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in an aviation red obstruction light globe shall be installed on each outside corner of the tower at each level.

20 All lighting shall be exhibited from sunset to sunrise unless otherwise specified.

21 All lights shall burn continuously or shall be controlled by a light sensitive device adjusted so that the lights will be turned on at a north sky light intensity level of about 35 foot candles and turned off at a north sky light intensity level of about 58 foot candles.

22 During construction of an antenna structure, for which obstruction lighting is required, at least two 100-, 107-, 111- or 116-watt lamps (#100 A21/TS, #107 A21/TS, #111 A21/TS or #116 A21/TS, respectively) enclosed in aviation red obstruction light globes, shall be installed at the uppermost point of the structure. In addition, as the height of the structure exceeds each level at which permanent obstruction lights will be required, two similar lights shall be installed at each such level. These temporary warning lights shall be displayed nightly from sunset to sunrise until the permanent obstruction lights have been installed and placed in operation, and shall be positioned so as to insure unobstructed visibility of at least one of the lights at any angle of approach. In lieu of the above temporary warning lights, the permanent obstruction lighting fixtures may be installed and operated at each required level as each such level is exceeded in height during construction.

THIS FORM IS A PART OF AND SHALL BE ATTACHED TO THE CURRENT INSTRUMENT OF AUTHORIZATION

F.C.C. - Washington, D. C.

[5152]

[Rec'd. November 13, 1962 - F.C.C.]

PETITION FOR WAIVER OF RULES AND FOR ACCEPTANCE OF APPLICATION

WGN, Inc., by its attorneys and pursuant to Sections 1.15 and 1.307(a) of the Commission's Rules and Regulations, hereby requests that all pertinent provisions of the Commission's Rules and Regulations, including Sections 1.354 and 3.21(a)(1) be waived and that the above-entitled application, which is being filed simultaneously herewith, be accepted for filing.[1/] In support thereof, it is stated as follows.

I. Rule 1.354

1. By a Report and Order released May 10, 1962, the Commission amended Rule 1.354 so as to place an immediate "freeze"

[1/] The pertinent provisions of the above-cited sections of the Commission's Rules and Regulations are reproduced in Appendix A hereof.

[5153]

on the acceptance for filing of standard broadcast applications except for specified categories. (23 RR 1545.) The Report and Order recited that the Commission had found it "necessary to bring a temporary, partial halt to our acceptance of applications for new and changed facilities" in order "to restudy the standards under which we consider new and changed assignments". The Report and Order explained that by means of numerous grants of applications for new and changed facilities made in compliance with the current rules and standards, the Commission has been able to cure what it considered to be two of the three principal deficiencies of standard broadcast service,[2/] but that no significant cure has been effectuated regarding the third deficiency, the existence of "substantial 'white' areas in the Northeast, Midwest, South and Far West". The Report and Order emphasized that "[t]he outlying areas which lacked primary service in 1946 have been reduced only a minute degree by the continual flow of new assignments".[3]

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[2] The "lack of any local outlets in many communities of substantial size" and the "absence of competing local stations in communities that did not have a facility".

[3] Further, the Report and Order emphasized that the "continual flow of new assignments" and "the creation of multi-station markets has led to a derogation of engineering standards, so that a service rendered by existing stations in the outermost regions of their normally protected service areas has been impaired * * *." The Commission also noted that "future power increases to extend the interference-free contour over growing suburban populations are often rendered impossible, and the available channels for the establishment of new stations in growing under-served areas have been continually reduced in number."

2. It is thus clear that the essential reason for imposing the present AM freeze was the realization that granting of applications for new and changed facilities in the standard broadcast band under the current rules and standards has not resulted in any significant improvement of AM radio service to the millions of Americans living in rural and small town areas which do not receive a single acceptable nighttime groundwave service.

3. The previous recognition by the Commission of the "white" area problem led to the institution on February 20, 1945, of the so-called Clear Channel proceeding (Docket 6741). The February 20, 1945 Notice of Hearing recited that "there are still large areas of the continental United States which have no radio service during the day and no primary radio service at night". The accompanying Commission press release stated to the same effect that "a re-examination of present clear channel allocations is necessary since Commission studies reveal there are still large areas within the United States which receive no radio service at all during the daytime hours and no primary radio service at night". FCC Chairman Denny stated in 1946 that the purpose of the Clear Channel hearing was "to canvass the situation and see

what can be done about filling in those blank spots so that we will have full nation-wide coverage of all states and all communities, which is the Commission's objective in this proceeding."

(Docket 6741, R. 3922.)[4/] Chairman Denny also stated that it was "the Commission's earnest hope * * * that the individual parties * * * will come forward with constructive plans, looking towards whatever adjustments can be made to cover these white areas." (Ibid, R. 1827.)[5/]

4. The accuracy of the statement in the Commission's Report and Order released May 10, 1962 imposing the present AM freeze that the post World War II "tremendous proliferation of stations has occurred without significant reduction of 'white' areas" is graphically demonstrated by the fact that the addition of some 536 fulltime stations between May of 1947 and January of 1957 reduced the "white" area insignificantly (from 60.59% to 57.99%) while at the same time the "white" area population increased from some 23.2 million to some

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4/ Section 1 of the Communications Act of 1934, as amended, provides in pertinent part that the primary purpose for creating the Federal Communications Commission was "to make available, so far as possible, to all the United States a rapid, efficient, nation-wide and world-wide wire and radio communications service * * *." (Emphasis added). Section 1 also emphasizes the importance of furthering the national defense by means of regulating interstate and foreign commerce in communications by wire and radio.

5/ In the Docket 6741 hearing, the only concrete proposal advanced in response to Chairman Denny's request was the CCBS proposal to authorize all Class I-A stations to operate with power in excess of 50 kw. The "white" area problem was also the principal reason for the Clear Channel hearings held in 1936 (FCC Docket 4063) and 1938 (FCC Docket 5072-A).

25.6 million (Docket 6741, Third Notice released September 22, 1959, paragraph 10, 24 F.R. 7737). Although the bulk of the "white" area (74.8%) lies west of the Mississippi River, the bulk of the "white" area population (71.3%) lives east thereof (Ibid).

5. The Commission, based on the record evidence compiled in the Docket 6741 Clear Channel hearing, correctly concluded that "improvement of nighttime service throughout most of the existing white areas must be provided, if at all, by new or improved skywave service" (Further Notice of Proposed Rule Making released April 15, 1958 in Docket 6741, paragraph 41, 23 F.R. 2612). In spite of this conclusion, the Commission on September 14, 1961 released a Report and Order in Docket 6741 looking toward authorizing fulltime Class II stations on 14 Class I-A channels and reserving for the future a decision as to whether Class I-A stations should be authorized to operate with higher power (21 RR 1801). The locations of the existing 14 Class I-A stations and the 14 proposed Class II fulltime stations are shown below:

Frequency (kc)	Class I-A Station	Location of Proposed Class II Station 6/
1. 670	WMAQ, Chicago, Ill	Idaho
2. 720	WGN, Chicago, Ill	Nevada or Idaho
3. 750	WSB, Atlanta, Ga.	Anchorage, Alaska
4. 760	WJR, Detroit, Mich.	San Diego, Calif.
5. 770	WABC, New York City	Albuquerque, N.M.
6. 780	WBBM, Chicago, Ill	Nevada
7. 880	WCBS, New York City	N.D., S.D., or Nebr.

6/ KOB, Albuquerque, has been operating on 770 kc since 1941. The proposed Class II stations on 750 kc and 760 kc are existing stations (KFQD, Anchorage and KFMB, San Diego).

Frequency (kc)	Class I-A Station	Location of Proposed Class II Station
8. 890	WLS, Chicago, Ill.	Utah
9. 1020	KDKA, Pittsburgh, Pa.	New Mexico
10. 1030	WBZ, Boston, Mass.	Wyoming
11. 1100	KYW, Cleveland, Ohio	Colorado
12. 1120	KMOX, St. Louis, Mo.	Calif. or Oregon
13. 1180	WHAM, Rochester, N.Y.	Montana
14. 1210	WCAU, Philadelphia, Pa.	Kansas, Nebr. or Okla.

6. An engineering study prepared for the Clear Channel Broadcasting Service (CCBS), of which petitioner is a member, demonstrated that 11 of the above-noted proposed Class II stations (excluding the existing stations in Anchorage, San Deigo and Albuquerque) would provide no nighttime skywave service at all and could be expected to provide interference-free nighttime groundwave service to only 41,582 square miles of "white" area (or 2.41% of the 1,725,095 square miles of "white" area which existed as of 1957[7]) and to only 234,575 "white" area residents (or 0.916% of the 1957 "white" area population of 25.6 million people).[8] (See Engineering Statement dated October 16,

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[7] Recent studies made by CCBS show that as of September 13, 1961, the "white" area consists of 1,726,293 square miles or 58.03% of the land area of the continental United States and that the "white" area population totals 25,106,079.

[8] In testimony given February 13, 1962 before a subcommittee of the House Committee on Interstate and Foreign Commerce on H.R. 8210, et al., Chairman Minow testified that the Commission's staff estimated that the 11 proposed new stations would provide a first nighttime primary service to "at least 600,000 persons" (page 235). Even if this estimate is accepted, it is obvious that the improvement of service to nighttime "white" areas and populations would be insignificant.

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1961 attached to CCBS Petition for Rehearing filed October 16, 1961 in Docket 6741 and Appendices C, D, E and F hereto attached for population and area details, including state-by-state breakdown.

7. If KFMB were to operate on 760 kc as proposed in the above-noted Report and Order released September 14, 1961, it would not provide nighttime primary service to any area and population not now receiving nighttime primary service (see Engineering Statement dated October 15, 1961 attached to Petition for Reconsideration filed October 16, 1961 by The Goodwill Stations, Inc. in Docket 6741; see also Fig. 11 of Engineering Exhibit dated October 12, 1962 accompanying application of The Goodwill Stations, Inc. (WJR) for 750 kw filed October 22, 1962).

8. The above-noted statistics as to the insignificant degree to which service to "white" areas would be improved by implementation of the above-noted duplication of a majority of the Class I-A frequencies demonstrates the validity of the above-cited April 15, 1958 conclusion of the Commission that improvement of nighttime service to existing "white" areas must be provided by improved skywave service.

9. Principally because of the above-noted facts, the House Subcommittee on Communications and Power of the Committee on Interstate and Foreign Commerce held hearings on February 1, 2 and 13, 1962 on various bills looking toward the prohibition of the

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duplication of Class I-A frequencies and the authorization of higher power for Class I-A Clear Channel stations. On July 2, 1962, the House of Representatives passed House Resolution 714 which had been reported out unanimously by the House Committee on Interstate and Foreign Commerce following the above-noted hearings (108 Cong. Rec. 11678-11686).

10. H. Res. 714 is set forth in full in Appendix B hereof. In essence, it provides that the Commission (1) may authorize power in excess of 50 kw with respect to any of the existing Class I-A Clear Channel stations notwithstanding the provisions of Senate Resolution 294 adopted June 13, 1938,[9] and (2) should not authorize for a period

of one year any additional fulltime stations on any of the existing Class I-A Clear Channel frequencies.

11. The Committee Report accompanying H. Res. 714 (Report No. 1954, 87th Congress, 2d Session) stated that the above-noted one year moratorium was imposed for the twofold purpose of (1) giving the Commission an opportunity to reconsider its September 14, 1961, Report and Order in Docket 6741 and (2) giving all Class I-A Clear Channel stations an opportunity to file applications for

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[9] House Resolution 714 was the result of hearings held before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce on a series of bills which had been introduced to amend the Communications Act to authorize power in excess of 50 kw on Class I-A channels and to prohibit the assignment of other stations on the Class I-A channels. These hearings were held February 1, 2, and 13, 1962, and House Resolution 714, after receiving unanimous approval by the House Committee on Interstate and Foreign Commerce, was referred to the House of Representatives on June 29, 1962. It was debated on the floor of the House on July 2, 1962, under suspension of the Rules (requiring a two-thirds vote for approval). After extensive debate, which consumed eight pages of the Congressional Record, the resolution was approved by *record* vote of 198 to 87 (Congressional Record for July 2, 1962, page 11685). By way of contrast, Senate Resolution 294 was adopted on Monday, June 13, 1938, having been introduced in the Senate on the previous Thursday and agreed to on Monday by *voice* vote without having been referred to a committee of the Senate and without having afforded interested parties any hearing whatsoever. The debate on the resolution, in which only 11 senators participated, consumed less than a page and a half of the Congressional Record, and was conducted under conditions not conducive to the full attention of whatever Senators were on the Senate

(cont'd. on next page)

power in excess of 50 kw. The House Report referred to the fact that "* * * the Committee was greatly impressed with engineering testimony * * * that operations with power in excess of 50 kilowatts would greatly benefit large areas and populations which do not have available to them any adequate nighttime radio service." The Report also emphasized the fact that the Committee received testimony from a spokesman on behalf of the Department of Defense "who stated '* * * we favor increased power and clear channel operation to aid in survivable communications'".

12. The instant application seeks authority to increase the operating power of WGN, a Class I-A station which operates on

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(Cont'd. from previous page)

floor at the time. For example, at one point during the debate, one Senator stated "we literally cannot hear anything that is going on in the chamber"; at another point another Senator commented "the racket here on the floor has prevented my hearing"; and finally at still another point a third Senator stated "no one has ever seen the resolution except perhaps the Senator from Montana." (83 Congressional Record, pp. 8944-8945).

[5161]

720 kc at Chicago, Illinois, from 50 kw to 750 kw. Figures 9A and 9B (existing and proposed 0.5 mv/m groundwave contours) of the engineering exhibit attached to the application, show that portions of Michigan, Indiana, Illinois, Iowa and Wisconsin will be encompassed for the first time within the porposed WGN 0.5 mv/m groundwave contour. Figures 10A and 10B compare the existing 0.1 mv/m and the proposed 0.1 mv/m daytime groundwave contours. It will be noted that, in addition to the above-listed states, portions of Missouri, Minnesota and Kentucky will also be encompassed for the first time within the proposed WGN 0.1 mv/m groundwave contour. A comparison of Figures 11A and 11B of the engineering exhibit shows that the following states, or major portions thereof, will be encompassed for the first time within the proposed WGN 0.5 mv/m 50% of the time

skywave contour: Colorado, Montana, New Mexico, Wyoming, Texas, Louisiana, Florida, Vermont, New Hampshire, Massachusetts, Maine, Connecticut and Rhode Island.

13. It is thus apparent that the instant WGN application to increase power to 750 kw would improve significantly the service now afforded to "white" areas and is therefore in full compliance with the provisions of H. Res. 714 passed July 2, 1962. Further, the operation of WGN with power of 750 kw would comply with the Department of Defense's position of favoring "increased power and clear channel operation to aid in survivable communications"; would be

[5162]

of vital importance in assisting Civilian Defense Agencies in accomplishing their mission of alerting and informing the American public in times of national disasters and emergencies; and would result in stronger, more reliable nighttime signals to Latin Americans, thus making it possible to bring about a better understanding between the United States and our neighbors to the south.

14. It is respectfully submitted that the above-recited facts constitute good cause and justification for waiving the pertinent provisions of Rule 1.354, especially in view of the fact that the freeze was imposed for the primary reason of enabling the Commission to take steps to improve service to "white" areas (*U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192).

II. Rule 3.21(a)(1)

15. It is respectfully submitted that the matters set forth in Part I above likewise constitute good cause and justification for waiving the provision of Rule 3.21 that limits the operating power of Class I stations to 50 kw.

III. Other Rules

16. In the event the Commission determines that the subject application is patently not in accordance with any Commission rule, regulation or requirement in addition to the ones specifically ennumerated above, it is respectfully submitted that the matters set

forth in Part I hereof constitute good cause and justification for waiving the provisions of any such rules, regulations or other requirements.

WHEREFORE, the premises considered, it is respectfully requested that the provisions of Rules 1.354, 3.21(a)(1), and any other rule, regulation or requirement which the Commission determines is patently not complied with by the subject WGN application be waived and the application of WGN, Inc. filed simultaneously herewith seeking authority to increase the operating power of Class I-A station WGN from 50 kw to 750 kw be accepted for filing.

Respectfully submitted,

WGN, INC.

By Reed T. Rollo

R. Russell Eagan
of
Kirkland, Ellis, Hodson,
Chaffetz & Masters
800 World Center Building
Washington 6, D.C.

Its Attorneys

November 13, 1962

[5164]

APPENDIX A

Pertinent Provisions of FCC Rules and Regulations

1. Rule 1.15:

"Suspension, amendment or waiver of rules. -- The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."

2. Rule 1.307(a):

"Defective applications. -- (a) Applications which are determined to be patently not in accordance with the Commission's rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed. Requests for waiver shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof."

3. Rule 1.354:

"Processing of standard broadcast applications. --

(a) Applications for standard broadcast facilities are divided into two groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations, i.e., any change in frequency, power, hours of operation, or station location * * *"

* * *

"NOTE: Pending the Commission's re-study of the rules pertaining to allocation of standard broadcast

III. Other Rules

16. In the event the Commission determines that the subject application is patently not in accordance with any Commission rule, regulation or requirement in addition to the ones specifically ennumerated above, it is respectfully submitted that the matters set forth in Part I hereof constitute good cause and justification for waiving the provisions of any such rules, regulations or other requirements.

WHEREFORE, the premises considered, it is respectfully requested that the provisions of Rules 1.354, 3.21(a)(1), and any other rule, regulation or requirement which the Commission determines is patently not complied with by the subject WGN application be waived and the application of WGN, Inc. filed simultaneously herewith seeking authority to increase the operating power of Class I-A station WGN from 50 kw to 750 kw be accepted for filing.

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* * *

"NOTE: Pending the Commission's re-study of the rules pertaining to allocation of standard broadcast

facilities, requests for standard broadcast authorizations will be considered as set forth in paragraphs (a) and (b) of this note, notwithstanding any provisions of this chapter to the contrary.

(a) Applications for new standard broadcast stations or for major changes in the facilities of existing stations on the frequencies specified in § § 3.25, 3.26, and 3.27 of this chapter, will be accepted for filing only when the applications fall within the following categories:

(1) Applications requesting authority to increase power of existing Class IV stations on local channels from 250 watts, not to exceed 1 kilowatt, or, from 100 watts to 250 watts or 500 watts.

(2) Applications for new Class II-A stations specified in § 3.22 of this chapter.

(3) Applications for other facilities, except new 100 watt Class IV proposals, where a showing has been submitted to demonstrate that the proposed operation (i) would bring a first interference-free primary service, day or night, to at least 25% of the area or 25% of the population within the proposed interference-free service contour; and (ii) would not cause any objectionable interference to existing stations, and would not involve prohibited overlap as specified in § 3.37 of the Rules with existing stations.

(b) Applications for standard broadcast facilities now pending will be processed and acted upon in normal course. Applications for new stations or for major changes in existing stations tendered for filing after May 10, 1962, which are not consistent with the interim criteria, will be returned to the applicant."

4. Rule 3.21(a)(1):

"Classes of standard broadcast channels and stations. --

(a) Clear Channel. A clear channel is one on which the dominant station or stations render service over wide areas, and which are cleared of objectionable interference within their primary service areas and over all or a substantial portion of their secondary service areas. Stations operating on these channels are classified as follows:

(1) Class I station. A Class I station is a dominant station operating on a clear channel and designed to render primary and secondary service over an extended area and at relatively long distances. Its primary service area is free from objectionable interference from other stations on the same and adjacent channels, and its secondary service area free from interference except from stations on adjacent channels, and from stations on the same channel in accordance with the channel designation in § § 3.25 or 3.182. The operating power shall not be less than 10 kilowatts nor more than 50 kilowatts."

[5167]

APPENDIX B

H. Res. 714, As Passed July 2, 1962

Resolved, That it is the sense of the House of Representatives that the Federal Communications Commission --

(1) may, notwithstanding Senate Resolution 294, Seventy-fifth Congress, third session, adopted June 7, 1938, authorize the use of power in excess of fifty kilowatts on any of the twenty-five class I-A clear channel frequencies in the standard broadcast band (five hundred and forty to sixteen hundred kilocycles) which are specified in the rules of the Commission, if, after consideration of all pertinent factors, including the objective of providing improved

nighttime radio service to substantial areas and populations presently receiving inadequate nighttime radio service, the Commission finds that operation on such frequencies with power in excess of fifty kilowatts will serve the public interest, convenience, or necessity; and

(2) should not authorize, for a period of one year from the date of adoption of this resolution, the construction

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for nighttime operation, or the nighttime operation, of any station on any of the twenty-five class I-A clear channel frequencies in the standard broadcast band (five hundred and forty to sixteen hundred kilocycles) which are specified in the rules of the Commission, unless such station was or could have been authorized consistent with the rules of the Commission then in effect, to operate on such a frequency on July 1, 1961.

[5169]

APPENDIX C

EXTENT OF WHITE AREAS AS OF JANUARY 1, 1957[1/]

State	White Area (Sq. Miles)	Rank By Area	Rank by Population
1. Alabama	43,580	13	2
2. Arizona	104,470	3	27
3. Arkansas	41,287	16	10
4. California	89,723	6	16
5. Colorado	66,489	10	29
6. Connecticut	393	45	43
7. Delaware	376	46	44
8. Florida	37,770	18	12
9. Georgia	42,949	15	6
10. Idaho	66,810	9	31

State	White Area (Sq. Miles)	Rank By Area	Rank by Population
11. Illinois	1,786	41	39
12. Indiana	781	42	45
13. Iowa	639	44	42
14. Kansas	43,206	14	24
15. Kentucky	10,142	36	13
16. Louisiana	18,969	33	14
17. Maine	25,878	25	21
18. Maryland	2,874	40	33
19. Massachusetts	660	43	46
20. Michigan	30,256	21	19

1/ Reproduction of Exhibit 4 of CCBS Comments filed August 15, 1958 in Docket 6741.

[5170]

21. Minnesota	27,108	24	23
22. Mississippi	33,276	19	4
23. Missouri	29,353	22	15
24. Montana	107,585	2	28
25. Nebraska	48,602	12	17
26. Nevada	104,382	4	40
27. New Hampshire	6,499	38	34
28. New Jersey	None	48	47
29. New Mexico	97,735	5	25
30. New York	15,728	34	18
31. North Carolina	33,002	20	1
32. North Dakota	13,187	35	41
33. Ohio	4,409	39	30
34. Oklahoma	25,830	26	26
35. Oregon	81,480	8	22
36. Pennsylvania	23,635	27	3

State	White Area (Sq. Miles)	Rank By Area	Rank by Population
37. Rhode Island	324	47	48
38. South Carolina	23,061	28	5
39. South Dakota	38,069	17	35
40. Tennessee	20,370	31	7
41. Texas	127,990	1	11
42. Utah	53,073	11	38
43. Vermont	7,168	37	32
44. Virginia	28,208	23	8
45. Washington	20,796	30	37
46. West Virginia	19,075	32	9
47. Wisconsin	22,058	29	20
48. Wyoming	84,044	7	36
Total	1,725,095 (57.99% of the total land area of the U.S.*)		
West of Long. 96°	1,154,223 (38.80% of the total land area of the U.S.)		
East of Long. 96°	570,872 (19.19% of the total land area of the U.S.)		
West of Miss. River	1,290,837 (43.39% of the total land area of the U.S.)		
East of Miss. River	434,258 (14.60% of the total land area of the U.S.)		

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* Both the 1940 and 1950 Census list the total gross area (land and water) of the continental United States as 3,022,387 square miles. The total land area of the continental United States is 2,974,726 square miles (Statistical Abstract of the U.S., 1957, table 195, page 158). Table III of Exhibit 339 shows that as of May 1, 1947, the total amount of white area was 1,802,665 square miles or 60.59% of the total land area. The above-noted January 1, 1957 white area (1,725,095 square miles) represents 57.99% of the total land area. Thus, although the number of fulltime stations was increased from a total of 1,339 as of May 1, 1947 to a total of 1,875 as of January 1, 1957, the white area was reduced by only 2.6%. As shown in Exhibit 5, the white area population was increased during the same time by 2,379,059.

APPENDIX D

EXTENT OF WHITE AREA POPULATIONS 1/ AS OF MAY 1, 1947 AND JANUARY 1, 1957

State	5/1/47	1/1/57	1947 Rank	1957 Rank
1. Alabama	1,704,400	1,725,092	2	2
2. Arizona	144,800	304,118	35	27
3. Arkansas	1,007,000	1,078,360	10	10
4. California	187,600	592,039	31	16
5. Colorado	239,800	260,798	25	29
6. Connecticut	57,200	None	41	43
7. Delaware	22,000	None	43	44
8. Florida	669,400	738,819	14	12
9. Georgia	1,354,400	1,496,526	5	6
10. Idaho	206,700	233,043	28	31
11. Illinois	76,700	90,087	39	39
12. Indiana	None	None	47	45
13. Iowa	10,500	16,351	46	42
14. Kansas	379,100	346,664	20	24
15. Kentucky	647,500	720,323	15	13
16. Louisiana	756,100	710,257	12	14
17. Maine	332,400	505,253	21	21
18. Maryland	182,000	203,800	32	33
19. Massachusetts	19,000	None	44	46
20. Michigan	456,900	520,632	18	19
21. Minnesota	233,700	368,572	26	23
22. Mississippi	1,388,500	1,516,284	3	4
23. Missouri	756,100	705,509	13	15

[5173]

1/ Reproduction of Exhibit 5 of CCBS Comments filed August 15, 1958 in Docket 6741.

State	5/1/47	1/1/57	1947 Rank	1957 Rank
24. Montana	290,400	264,773	23	28
25. Nebraska	293,300	560,709	22	17
26. Nevada	48,900	79,208	42	40
27. New Hampshire	213,900	150,780	27	34
28. New Jersey	None	None	48	47
29. New Mexico	284,200	322,016	24	25
30. New York	460,700	544,632	17	18
31. North Carolina	1,770,200	1,850,005	1	1
32. North Dakota	75,200	45,539	40	41
33. Ohio	146,100	237,504	34	30
34. Oklahoma	529,800	314,252	16	26
35. Oregon	195,400	401,575	29	22
36. Pennsylvania	1,362,900	1,581,495	4	3
37. Rhode Island	16,000	None	45	48
38. South Carolina	1,204,800	1,516,237	7	5
39. South Dakota	171,400	137,582	33	35
40. Tennessee	1,053,000	1,195,604	9	7
41. Texas	999,400	959,604	11	11
42. Utah	79,500	94,328	38	38
		[5174]		
43. Vermont	193,900	225,130	30	32
44. Virginia	1,337,200	1,136,938	6	8
45. Washington	86,000	131,392	37	37
46. West Virginia	1,068,900	1,098,802	8	9
47. Wisconsin	407,600	513,635	19	20
48. Wyoming	131,700	137,092	36	36
Total	23,252,200 (100%)	25,631,259 (100%)		
East of Long 96°	19,579,200 (84.20%)	20,997,626 (81.92%)		
West of Long 96°	3,673,000 (15.80%)	4,633,633 (18.08%)		
East of Miss River	- - -	18,277,835 (71.31%)		
West of Miss River	- - -	7,353,424 (28.69%)		

APPENDIX E

CONTINENTAL UNITED STATES
SQUARE MILES AND POPULATION RELYING SOLELY ON CLEAR CHANNEL STATIONS FOR (AM) NIGHTTIME RADIO SERVICE

As Of
September 13, 1961

State	Square Miles		Percent in White Area	Population (1960 Census)		Percent Residents in White Area
	State Total	White Area Total		State Total	White Area Residents Total	
Alabama	51,078	43,340	84.9	3,266,740	1,637,185	50.1
Arizona	113,575	104,150	91.7	1,302,161	289,203	22.2
Arkansas	52,675	41,217	78.2	1,786,272	959,021	53.7
California	156,740	89,603	57.2	15,717,204	653,702	4.2
Colorado	103,922	66,409	63.9	1,753,947	246,723	14.1
Connecticut	4,899	393	8.0	2,535,234	15,889	.63
Delaware	1,978	376	19.0	446,292	8,249	1.9
Florida	54,262	37,253	68.6	4,951,560	931,787	18.8
Georgia	58,483	42,769	73.1	3,943,116	1,565,197	39.7
Idaho	82,769	66,651	80.5	667,191	233,839	35.5
Illinois	55,935	1,786	3.2	10,081,158	65,571	.65
Indiana	36,205	781	2.2	4,662,498	6,762	.14
Iowa	56,045	639	1.1	2,757,537	15,982	.58
Kansas	82,108	43,047	52.4	2,178,611	297,112	13.6
Kentucky	39,864	10,063	25.2	3,038,156	597,164	19.7
Louisiana	45,162	18,889	41.8	3,257,022	704,086	21.6
Maine	31,040	25,760	83.0	969,265	500,548	51.6
Maryland	9,881	2,800	28.3	3,100,689	218,592	7.0
Massachusetts	7,867	660	8.4	5,148,578	15,029	.29
Michigan	57,022	30,256	53.1	7,823,194	598,080	7.6
Minnesota	80,009	27,108	33.9	3,413,864	249,579	7.3
Mississippi	47,248	33,000	69.8	2,178,141	1,151,949	52.9
Missouri	69,226	29,338	42.4	4,319,813	683,886	15.8
Montana	145,878	107,506	73.7	674,767	279,509	41.4
Nebraska	76,663	48,602	63.4	1,411,330	257,687	18.3
Nevada	109,789	104,382	95.1	285,278	114,890	40.3
New Hampshire	9,017	6,420	71.2	606,921	142,056	23.4
New Jersey	7,522	-0-	-0-	6,066,782	-0-	-0-
New Mexico	121,511	104,376	86.0	951,023	331,818	34.9

APPENDIX E

State	Square Miles State Total	Square Miles White Area Total	Percent in White Area	Population (1960 Census) State Total	Population (1960 Census) White Area Residents Total	Percent Residents in White Area
New York	47,944	15,693	32.7	16,782,304	557,628	3.3
North Carolina	49,097	32,902	67.0	4,556,155	1,939,872	42.6
North Dakota	70,057	13,197	18.8	632,446	42,365	6.7
Ohio	41,000	4,250	10.4	9,706,397	216,537	2.2
Oklahoma	69,031	25,130	36.4	2,328,284	287,125	12.3
Oregon	96,315	81,360	84.5	1,768,687	437,418	24.7
Pennsylvania	45,054	23,385	51.9	11,319,366	1,673,874	14.8
Rhode Island	1,058	324	30.6	859,488	13,569	1.6
South Carolina	30,305	22,902	75.6	2,382,594	1,638,860	68.7
South Dakota	76,536	37,990	49.6	680,514	144,004	21.2
Tennessee	41,797	20,270	48.5	3,567,089	1,166,807	32.7
Texas	263,513	127,490	48.4	9,579,677	695,399	7.3
Utah	82,346	53,073	64.5	890,627	94,420	10.6
Vermont	9,278	7,128	76.8	389,881	300,245	76.8
Virginia	39,893	28,049	70.3	3,966,949	1,314,524	33.1
Washington	66,786	20,796	31.1	2,853,214	156,920	5.5
West Virginia	24,080	18,996	78.9	1,860,421	956,293	51.4
Wisconsin	54,705	22,058	40.3	3,951,777	529,902	13.4
Wyoming	97,506	83,726	85.9	330,066	169,222	51.3
Total[1] U.S.	2,974,674	1,726,293	58.03	177,700,280	25,106,079	14.1
Total[1] - East of Mississippi	856,512	431,614	50.39	118,160,745	17,762,169[2]	15.0
Total[1] - West of Mississippi	2,118,162	1,294,679[3]	61.12	59,539,535	7,343,910	12.3

[1] Excludes: Alaska, District of Columbia, and Hawaii.

[2] Represents 70.75% of the White Area population.

[3] Represents 74.99% of the White Area.

APPENDIX F

AM Radio Nighttime "White" Areas and Populations[1]

(Continental United States)

Source of Data	Year	No. Fulltime Stations	"White" Area Size		"White" Area Population
			Sq. Miles	% U.S. Land Area	
FCC	1938	503	1,692,249	56.9	21,308,453
CCBS	1938	503	1,821,622	61.3	28,470,931
CCBS	1947	1339	1,802,665	60.59	23,252,200
CCBS	1957	1875	1,725,095[2]	57.99[2]	25,631,259[2]
CCBS	1961	1919	1,726,293	58.03	25,106,079[3]

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[1] Area and population outside of nighttime groundwave coverage of all AM radio stations. Exhibit 109 standards (type "B") were used in these calculations for all years except 1938. The difference between the two 1938 computations is accounted for by the fact that the FCC Engineering Department used the 500-microvolt groundwave contour as the boundary of primary nighttime service while the CCBS calculations took into account the rapid fading zone and used the 800-microvolt groundwave contour. See pages 61 and 62 of CCBS Brief filed September 6, 1938 in Docket 5072-A.

[2] Calculations made in 1961 revealed the following changes in the 1957 "white" areas and populations:

1. Population count.

(a)	Minnesota figure	368,572
	Corrected Minnesota figure	259,661
(b)	Nebraska figure	560,709
	Corrected Nebraska figure	284,043
(c)	Total U. S. Figure	25,631,259
	Corrected total U.S. figure	25,245,682

2. Size of "white" area.

(a)	New Mexico figure	97,375 sq. mi.
	Corrected New Mexico figure	104,694 sq. mi.
(b)	Total U. S. land area	1,725,095 sq. mi.
	Corrected U.S. land area figure	1,732,054 sq. mi.

[3] Although the bulk of the "white" area (74.99% or 1,294,679 square miles) lies west of the Mississippi River, the bulk of the "white" area population (70.75% or 17,762,169 persons) lives east thereof.

[Rec'd Nov. 20, 1962-FCC]

[5180]

SUPPLEMENT TO PETITION FOR WAIVER OF RULES AND FOR ACCEPTANCE OF APPLICATION

WGN, Inc., by its attorneys and pursuant to Sections 1.15 and 1.307(a) of the Commission's Rules and Regulations, hereby supplements the "Petition for Waiver of Rules and for Acceptance of Application" filed herein on November 13, 1962. In support thereof, it is stated as follows:

1. There is being filed simultaneously herewith an amendment to the above-entitled application which consists of a "Supplement to Exhibit 13", the engineering exhibit. As shown below, this supplemental engineering data contains additional supporting data to demonstrate that the instant WGN application to increase power from 50 kw to 750 kw would improve significantly the service now afforded to "white" areas and is therefore in full

[5181]

compliance with the provisions of H. Res. 714 passed July 2, 1962; would comply with the Department of Defense's position of favoring "increased power and clear channel operation to aid in survivable communications; would be of vital importance in assisting Civilian Defense Agencies in accomplishing their mission of alerting and informing the American public in times of national disasters and emergencies; and would result in stronger, more reliable nighttime signals to Latin Americans, thus making it possible to bring about a better understanding between the United States and our neighbors to the south.

2. As shown in the above-noted "Supplement to Exhibit 13" the area encompassed within the WGN 0.5 mv/m groundwave interference free contour would be increased from 73,020 square miles to 154,110 square miles during the daytime and from 73,180 square miles to

164,260 square miles during the nighttime. The daytime population within the pertinent contour would be increased from 11,813,639 to 17,462,623 or a gain of 5,648,984. The nighttime population within the pertinent contour would be increased from 11,816,583 to 17,913,007, or a gain of 6,096,424. The 81,090 square miles which would be encompassed for the first time within the WGN 0.5 mv/m daytime interference free groundwave contour encompasses portions of the states of Michigan, Indiana, Illinois, Iowa and Wisconsin, and lesser portions of Ohio and Missouri.

[5182]

The 91,080 square miles which would be encompassed for the first time within the WGN 0.5 mv/m nighttime interference free groundwave contour would also encompass portions of the above-noted states (see Figures 9A and 9B of Exhibit 13 as originally filed).

3. The "Supplement to Exhibit 13" also demonstrates that the area encompassed within the WGN 0.1 mv/m daytime interference free groundwave contour would be increased from 137,530 square miles to 243,836 square miles. The population residing within the pertinent contour would be increased from 13,528,816 to 18,971,229, or a total of 5,442,413. The 106,306 square miles which would be encompassed for the first time within the WGN 0.1 mv/m daytime interference free groundwave contour encompasses portions of the states of Missouri, Minnesota and Kentucky, in addition to the states listed above (see Figures 10A and 10B of Exhibit 13 as originally filed).

4. The "Supplement to Exhibit 13" also demonstrates that the number of square miles encompassed within the WGN 0.5 mv/m 50% interference free skywave contour would be increased from 1,199,125 square miles to 2,051,295 square miles. The population receiving a nighttime interference free secondary service would be increased from 35,354,249 to 41,745,920, or a gain of 6,391,671. The 852,170 square miles which would be encompassed

[5183]

for the first time within the WGN interference free secondary service area would encompass the following states, or major portions thereof: Colorado, Montana, New Mexico, Wyoming, Texas, Louisiana, Florida, Vermont, New Hampshire, Massachusetts, Maine, Connecticut and Rhode Island (see Figures 11A and 11B of Exhibit 13 as originally filed).

Respectfully submitted,
WGN, INC.
By /s/ Reed T. Rollo
By /s/ R. Russell Eagan
of
Kirkland, Ellis, Hodson, Chaffetz & Masters
800 World Center Building
Washington 6, D. C.
Its Attorneys

November 20, 1962

[Filed April 2, 1945]

[5246]

APPEARANCE OF CLEAR CHANNEL BROADCASTING SERVICE AND ITS MEMBERS

Responding to the Commission's order in the above-entitled cause, the Clear Channel Broadcasting Service and its members, comprising the following licensees of clear channel stations:

Licensee	Call Letters
Earle C. Anthony, Inc.	KFI
A. H. Belo Corporation	WFAA
National Life & Accident Insurance Co.	WSM
Courier-Journal & Louisville Times	WHAS
Stromberg-Carlson Telephone Manufacturing Co.	WHAM

Licensee	Call Letters
WJR The Goodwill Station	WJR
Southland Industries, Inc.	WOAI
Carter Publications, Inc.	WBAP
WCAU Broadcasting Co.	WCAU
Loyola University	WWL
Central Broadcasting Co.	WHO
Atlanta Journal Co.	WSB
WGN, Inc.	WGN
Crosley Corporation	WLW
Agricultural Broadcasting Co.	WLS
Westinghouse Radio Stations, Inc.	KDKA

hereby notify the Commission of their desire to appear and testify at the hearing to be held herein. This appearance is filed in behalf of the foregoing parties both collectively as a group and individually so as to reserve to each licensee full liberty to make such separate or supplementary presentation and to take any and all other steps in the course of the proceedings in its own name and behalf as it may deem necessary or desirable.

Notwithstanding the utmost diligence on the part of the above-named parties, they are unable at this time to state the names of the witnesses who will appear in their behalf, the topics each witness will discuss, or the time expected to be required for the testimony. This is because the work that has so far been accomplished in preparation on the issues is not sufficiently advanced.

Respectfully submitted,

/s/ Louis G. Caldwell
Counsel for the above-named
parties

BRIEF FOR INTERVENORS
AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.,
WXYZ, INC., WLS, INC.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. [illegible]

THE GOODWILL STATIONS, INC., Appellant,

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

No. [illegible]

WGN, INC., Appellant,

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

No. [illegible]

THE GOODWILL STATIONS, INC. [illegible] WGN, INC., Petitioners,

UNITED STATES OF AMERICA [illegible]
FEDERAL COMMUNICATIONS COMMISSION, Respondents,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

JAMES A. McKENNA, JR.
VERNON L. WILKINSON

McKenna & Wilkinson
[illegible] DeSales Street, N.W.
Washington [illegible], D.C.

Counsel for
AMERICAN BROADCASTING-
PARAMOUNT THEATRES, INC.
WXYZ, INC.
WLS, INC.

QUESTIONS PRESENTED

The issues presented by the instant appeals and joint petition for review, as agreed to by the parties in the prehearing stipulation accepted by this Court, are correctly set forth in the briefs of the appellants-petitioners.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,498

THE GOODWILL STATIONS, INC., **Appellant,**

v.

FEDERAL COMMUNICATIONS COMMISSION, **Appellee,**

TRANSCONTINENT TELEVISION CORP.,
MIDWEST RADIO-TELEVISION, INC.,
AMERICAN BROADCASTING-PARAMOUNT THEATRES INC.,
and WXYZ, INC., **Intervenors.**

No. 17,499

WGN, INC., **Appellant,**

v.

FEDERAL COMMUNICATIONS COMMISSION, **Appellee,**

TRANSCONTINENT TELEVISION CORP.,
MIDWEST RADIO-TELEVISION, INC.,
AMERICAN BROADCASTING-PARAMOUNT THEATRES INC.,
and WLS, INC., **Intervenors.**

No. 17,500

THE GOODWILL STATIONS, INC. and WGN, INC., **Petitioners,**

v.

UNITED STATES OF AMERICA and
FEDERAL COMMUNICATIONS COMMISSION, **Respondents,**

CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM,
AMERICAN BROADCASTING-PARAMOUNT THEATRES INC.,
WXYZ, INC. and WLS, INC.,
WESTINGHOUSE BROADCASTING COMPANY, INC.,
TRANSCONTINENT TELEVISION CORP.,
MIDWEST RADIO-TELEVISION, INC., **Intervenors.**

On Appeals from and Petition to Review Decisions of the
Federal Communications Commission

BRIEF FOR INTERVENORS, AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC., WXYZ, INC., AND WLS, INC.

COUNTERSTATEMENT OF THE CASE

Intervenors American Broadcasting-Paramount Theatres, Inc. (ABC), a nationwide radio network, and its wholly owned subsidiaries WXYZ, Inc. and WLS, Inc., as licensees of station WXYZ, Detroit, Mich. (1270 kc, 5 kw, DA-N) and of station WLS, Chicago, Ill. (890 kc, 50 kw, U), respectively, adopt the Counterstatement of the Case contained in the Government's brief.

SUMMARY OF ARGUMENT

I.

With the Commission unable to conclude at this time that superpower is economically and socially desirable, its decision to permit Class II-A duplication of certain clear channels and to reserve the others for similar duplication or for superpower at a later date has a reasonable legal and factual basis, a determination arrived at by the agency to which Congress has entrusted such matters and for whose views in this field this Court will not substitute its judgment. Coastal Bend Television Co. v. Federal Communications Commission, 98 U.S. App. D.C. 251, 255; 234 F.2d 686 (1956).

II.

The Commission's refusal to accord WJR and WGN an adjudicatory hearing on their renewal applications and on their applications for superpower was not improper in the instant circumstances. Rule 1.64; United States v. Storer Broadcasting Co., 351 U.S. 192 (1956).

ARGUMENT

The Goodwill Stations, Inc. (WJR) and WGN, Inc. (WGN), as appellants and petitioners, request this Court (a) to direct the Commission to set aside its actions permitting Class II-A duplication of 13 clear channels; (b) to direct the Commission to provide "at least four reliable broadcast signals to all areas of the United States now without a satisfactory nighttime primary service" by authorizing "superpower"; and (c) to direct the Commission to entertain previously rejected applications by Station WGN, Chicago, Ill. and WJR, Detroit, Mich. for authority to operate on 720 kc and 760 kc with 750 kw of power (WGN-WJR Br. pp. 53-54). Westinghouse Broadcasting Co., Inc. (Westinghouse) would be content with a more traditional order reversing and setting aside the Clear Channel Decision (31 FCC 565, R. 4085-4146; R. 4925-4948).

I.

The Aspects of the Clear Channel Decision Challenged by WJR, WGN, and Westinghouse Were Neither Unlawful Nor Arbitrary[1]

By the Communications Act of 1934 Congress centralized in one administrative agency, the Federal Communications Commission, the functions and responsibility of regulating "wire and radio communication" (47 U.S.C. Sec. 151 et seq.). To that end the Commission was expressly empowered, "as public convenience, interest, or necessity requires," to "classify radio station" (47 U.S.C. Sec. 303(a)); to "prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class" (47 U.S.C. Sec.

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[1] Out of an abundance of caution ABC has filed a protective petition for review (Case No. 17,567) from the Commission's wholly disparate treatment in its Clear Channel Decision of the frequency 770 kc. That appeal has been held in abeyance pending a final decision by the Commission in a further hearing which the Commission ordered in Docket 6584 pursuant to this Court's admonitions in American Broadcasting-Paramount Theatres, Inc. v. United States, 108 U.S. App. D.C. 83, 87-88, 280 F.2d 631 (1960).

303(b)); to "assign bands of frequencies to the various classes of station and assign frequencies for each individual station and determine the power each station shall use and the time during which it may operate" (47 U.S.C. Sec. 303(c)); and to "study new uses for radio . . . and generally encourage the larger and more effective use of radio in the public interest" (47 U.S.C. Sec. 303(g)).

Under this statutory setup, "it is for the Commission, not the Courts," to pass on the wisdom and efficacy of a particular allocation scheme — so long as the Commission's action, in an area of discretion and expertise, "has a reasonable factual and legal basis." Coastal Bend Television Co. v. Federal Communications Commission, 98 U.S. App. D.C. 251, 255, 234 F.2d 686 (1956).

In the instant proceeding a majority of the Commission was unable to find that higher power, at this juncture, is socially or economically desirable, the matter being one requiring still further study. 31 FCC 565, 573-574, para. 20. And as made abundantly clear in its decision denying reconsideration (R 4925-4948), this conclusion was not bottomed on the 1938 Senate Resolution (S. Res. 294, 75th Cong. 3d sess.) but on the danger that action permitting a handful of clear channel stations to provide a powerful skywave signal to two-thirds or more of the United States, particularly in the more sparsely populated regions of the United States, might leave those communities with no local outlets of their own in contravention of 47 U.S.C. Sec. 307(b) (R. 3763-3767). In fact, even at present it is difficult enough for a station like WXYZ in Detroit (with 5 kw power) to compete against a WJR operation with 50 kw, not to mention 500 kw or 750 kw. And a WLS in Chicago with 50 kw, in competition with WGN operating with 750 kw, would fare little better.

In short, the mere fact that "superpower" is engineeringly feasible, and that 750 kw operations in the midwest would provide stronger skywave signals to portions of the United States presently dependent on skywave signals for radio service, does not necessarily mean that such authorizations are in the public interest — if the consequences thereof would be to deprive small communities of stations of their own and permit a handful of licensees to monopolize broadcasting.

Despite the contrary inference which WJR and WGN seek to leave, the 1962 House Resolution (H.R. Res. 714) did not direct the Commission to amend its rules at this time to provide for power in excess of 50 kw. The House merely made it clear that the Commission should no longer deem itself bound by the 1938 Senate Resolution, if the Commission otherwise concluded that higher power was in fact in the public interest.

Being unable to find, on the basis of data thus far adduced, that higher power is socially or economically desirable, the Commission concluded in Docket 6741 (31 FCC 565), reaffirmed on reconsideration (R. 4925-4948), that the authorization of a single Class II-A facility in the west on each of 13 channels there broken down would provide additional and needed radio service, while at the same time substantially protecting the existing usable service of the dominant I-A stations on these channels. With the other clear channels left in status quo, the Commission was not permanently rejecting superpower. It realized, to the extent that needed additional service in underserved areas was not forthcoming from Class II-A operations there authorized, that at least four potent skywave signals to substantially all of the United States could be had at a later date by the superpower route on the channels left in "status quo." There was, we submit, a legal and factual basis for the actions which the Commission took and which WJR, WGN, and Westinghouse here challenge. In such situations this Court will not substitute its judgment for that of the expert body which Congress established to decide such matters.

In this connection, although WJR and WGN criticize the Commission for its inability to conclude from data adduced in Docket 6741 that superpower is economically and socially desirable, and in effect ask this Court to direct the Commission to so conclude, it is not without significance that the Clear Channel Broadcast Service (CCBS), an association composed of Class I-A stations interested in higher power (of which WJR and WGN are both members), has petitioned the Commission, by a pleading filed April 8, 1963, to institute rule-making proceedings looking toward higher power. Significantly enough, the areas which CCBS asks be explored in such a proceeding include inter alia the following:

> d. What steps should be taken in view of the provisions of the 1950 NARBA and the 1957 agreement with Mexico to implement authorization of power for Class I-A Clear Channel stations in excess of 50 kw.
>
> e. The estimated construction and increased operating costs involved in Class I-A Clear Channel stations operating with powers of 500 kw, 750 kw and 1000 kw.
>
> f. Whether the authorization of power for Class I-A Clear Channel stations in excess of 50 kw would have any adverse and injurious economic effects on other stations operating with less power; and if so, whether there are counter-balancing public interest benefits which would accrue from such authorization.
>
> g. Whether the authorization of 50 kw would tend to concentrate political, social and economic power in the hands of a very small group; and if so, whether there are counter-balancing public interest benefits which would accrue from such authorization.

In our view this is a tacit admission that before a determination can be reached that superpower is in the public interest additional matters remain to be explored.

II.

The Commission's Refusal to Grant WJR and WGN an Adjudicatory Hearing Was Not Here Improper

WJR and WGN, individually and as members of the Clear Channel Broadcasting Service, were active participants at all steps of the Clear Channel proceeding. Subsequent to the issuance of the Clear Channel Decision of September 13, 1961 (31 FCC 565, R. 4085-4146) their licenses on 720 kc and 760 kc were renewed subject to their accepting a single Class II operation on their respective frequencies, in line with the conclusions which the Commission reached in Docket 6741. From these "partial grants" of their renewals, neither WJR nor WGN demanded a hearing within the 30 days specified by Rule 1.64. It is unnecessary, therefore, to determine whether this case does or does not come within the principles laid down in Transcontinental Television Corporation v. Federal Communications Commission, 113 U.S. App. D.C. 384, 308 F.2d 339 (1962).

And the Commission's refusal to order a hearing on their motions for a waiver of the 50 kw power limitation contained in existing rules, and to entertain WJR's and WGN's applications for 750 kw, was not an abuse of discretion, particularly where (as here) the Commission had just completed considering the matters set forth in those waiver requests in a concurrently issued Memorandum Opinion and Order in Docket 6741 refusing to authorize superpower at this time (R. 4925-4948). United States v. Storer Broadcasting Co., 351 U.S. 192 (1956).

CONCLUSION

Wherefore, intervenors ABC, WXYZ and WLS submit that those aspects of the Clear Channel Decision and attendant Commission actions challenged by WJR, WGN, and Westinghouse should be affirmed.

Respectfully submitted,

JAMES A. McKENNA, JR.

VERNON L. WILKINSON

McKenna & Wilkinson
1735 DeSales Street, N. W.
Washington 6, D. C.

Counsel for
AMERICAN BROADCASTING—
PARAMOUNT THEATRES, INC.
WXYZ, INC.
WLS, INC.

April 29, 1963

BRIEF FOR INTERVENOR,
MIDWEST RADIO-TELEVISION, INC.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

STATEMENT OF QUESTIONS PRESENTED

The stipulation of the parties with respect to the questions presented is correctly stated by appellants-petitioners.

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* Authorities chiefly relied on are marked with an asterisk.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,498

THE GOODWILL STATIONS, INC., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

No. 17,499

WGN, INC., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

No. 17,500

THE GOODWILL STATIONS, INC. and WGN, INC., Petitioners,
v.
UNITED STATES OF AMERICA
and the
FEDERAL COMMUNICATIONS COMMISSION, Respondents,
TRANSCONTINENT TELEVISION CORP., et al., Intervenors.

On Appeal from and Joint Petition to Review and Set Aside Orders of the Federal Communications Commission

BRIEF FOR INTERVENOR, MIDWEST RADIO-TELEVISION, INC.

COUNTERSTATEMENT OF THE CASE

The detailed background of the Clear Channel case is set forth in appellee-respondent's brief and will not be repeated in full here.

Intervenor Midwest Radio-Television, Inc. (Midwest) is the licensee of Station WCCO, Minneapolis, Minnesota, operating with power of 50 kw on 830 kc, one of the 25 Class I-A Clear Channel frequencies (R. 4113, Par. 73).

Since 1943, WNYC, a municipally owned and operated station at New York City, has been permitted under a series of temporary authorizations to operate on 830 kc during certain nighttime hours -- 6 a.m. (e.s.t.) to local sunrise and from sunset at Minneapolis to 10 p.m. (e.s.t.), with power of 1 kw (R. 4114, Par. 75).[1] Notwithstanding the directional antenna employed, WNYC's operation during nighttime hours causes interference to WCCO. In a pending adjudicatory proceeding (Docket 11227), the Commission has under consideration the question whether, balancing the interference caused to WCCO against the service WNYC renders during nighttime hours, the public interest would be served by continuing to permit WNYC's nighttime operation, for which no provision is made in the Commission's rules governing the use of Class I-A frequencies (R. 4114, Par. 75).

On September 22, 1959, the Commission released a Third Notice of Proposed Rule Making in Docket 6741, the Clear Channel Proceeding, which, _inter alia_, invited comments on a proposal to authorize one additional fulltime station on 23 of the 25 Class I-A Clear Channels, including 830 kc (R. 1793-1815). Midwest filed comments on April 1, 1960 and reply comments on June 1, 1960, directed to this proposal, demonstrating that the public interest required that the Clear Channel frequency 830 kc not be duplicated (R. 2819-2861, 3588, 3815-3830).

---

[1] WNYC's regularly licensed limited-time operation on 830 kc is at 1 kw power, with a different directional antenna (_Ibid_.).

On September 14, 1961, the Commission released a Report and Order in Docket 6741 (R. 4085-4146) amending its Rules, effective October 30, 1961, by authorizing one additional fulltime station on 13 of the 25 Class I-A frequencies, not including 830 kc (R. 4085-4146).[2]

With respect to 720 kc, on which appellant-petitioner WGN is licensed to operate, Rules 3.22(a) and 3.182(a) were amended to authorize the operation of a fulltime station located in Nevada or Idaho, with the provision that the new station protect the 0.1 mv/m daytime groundwave and 0.5 mv/m nighttime skywave 50 percent contours of WGN operating at 50 kw and provide a first nighttime primary service to either 25 percent of its nighttime interference-free primary service area or to 25 percent of the population residing therein (R. 4085-4146).

As for the frequency 760 kc, licensed to WJR, Rules 3.21(a) and 3.25(a)(3) were amended to authorize the fulltime operation of KFMB, San Diego, California, on 760 kc with maximum power of 5 kw, subject to the provision that KFMB protect the 0.1 mv/m daytime groundwave and 0.5 mv/m nighttime 50 percent skywave contours of WJR operating with power of 50 kw (R. 4085-4146).

With respect to WNYC, operating with an SSA on 830 kc during certain nighttime hours, the Commission amended the Clear-Channel

---

[2] The 13 duplications are as follows:

Frequency (kc)	Class I-A Station	Location of Proposed Class II Station
1. 670	WMAQ, Chicago, Ill.	Idaho
2. 720	WGN, Chicago, Ill.	Nevada or Idaho
3. 750	WSB, Atlanta, Ga.	Anchorage, Alaska
4. 760	WJR, Detroit, Mich.	San Diego, Calif.
5. 780	WBBM, Chicago, Ill.	Nevada
6. 880	WCBS, New York, N. Y.	N.D., S.D., or Nebr.
7. 890	WLS, Chicago, Ill.	Utah
8. 1020	KDKA, Pittsburgh, Pa.	New Mexico
9. 1030	WBZ, Boston, Mass.	Wyoming
10. 1100	KYW, Cleveland, Ohio	Colorado
11. 1120	KMOX, St. Louis, Mo.	Calif. or Oregon
12. 1180	WHAM, Rochester, N. Y.	Montana
13. 1210	WCAU, Philadelphia, Pa.	Kansas, Nebr. or Okla.

Rules to establish the basis for the regular licensing of WNYC's nighttime operation so that if it is decided in the pending adjudicatory proceeding that such operation is in the public interest, the way would be clear procedurally for an application to be filed for such operation on a regular basis (R. 4114, Par. 76).

Thus, in its Report and Order released in the Clear Channel Case on September 14, 1961, the Commission concluded that new unlimited time Class II-A stations should be permitted on certain of the Class I-A channels, but not including 830 kc. As for the Class I-A channels such as 830 kc, not being broken down at this time, the Commission stated:

> "We thus leave open and unprejudiced the question of whether, and, if so, how, the public interest would be served by changing the rules affecting the use of the 12 Class I-A channels [including 830 kc] now left in status quo. At such time as further developments, including progress under the changes we now adopt, provide needed additional light on the question we will give further consideration to how best to utilize the 12 clear channels not now disturbed" (R. 4094, Par. 21).

In concluding that various Clear Channel frequencies should be duplicated, the Commission explained (R. 4092-4093, Pars. 16 and 17):

> "16. Both in the further notice of April 15, 1958, and in the third notice of September 18, 1959, the Commission invited comments on proposals to remove the heretofore total exclusivity of nighttime use of the class I-A channels by a single station. The third notice contemplated additional unlimited-time station assignments on substantially all of the class I-A channels. The earlier further notice had looked toward this step on half of them. The underlying justification, in each case, was the compelling need to go as far as possible toward reducing the vast areas which lack any nighttime primary service. The record is replete with data demonstrating that, to an extent, this can be done with resultant increments of nighttime primary service to persons now lacking it without undue interference to the wide area service rendered by the class I-A stations. This possibility derives from a combination of factors including directionalization of new unlimited time stations on these channels, the long distances between their prescribed locations and the transmitter sites of the existing cochannel I-A stations and the numbers of other services available in limited areas

> where interference from the new station may to a limited extent interfere with present reception of skywave service from the existing class I-A station. Moreover, the limited amount of skywave service which would be so subjected to interference is of a low order since new unlimited-time stations will be required to protect the 0.5-mv/m 50 percent skywave contour of the class I-A station -- generally located approximately 700 miles from its transmitter.
>
> "17. These basic considerations, in our considered view, strongly underscore the desirability of permitting the establishment of new unlimited time stations on at least some of the class I-A channels, and we make appropriate provision therefore, in the accompanying rule amendments, on 13 of the class I-A channels; i.e., 670, 720, 750, 760, 780, 880, 890, 1020, 1030, 1100, 1120, 1180, and 1210 kc."

And, with respect to the reasons it selected the particular Clear Channels for duplication, the Commission stressed (R. 4096-4097, Pars. 26 and 27):

> "26. Implementation of our judgment that we should at this time refrain from permitting shared nighttime use of all the class I-A channels poses the problem of selecting, on a suitable basis, those channels on which we open the way to additional unlimited-time stations and those reserved for future decision. Numerous considerations bear on such a selection. The basic determinant is the question of whether, taking into account the numerous circumstances affecting each channel and the resultant overall pattern of service, it is best suited to shared use or to the preservation of possibilities of wider service from the existing class I-A station through utilization of higher power. Key factors having a bearing on this judgment include:
>
> "a. Location of needful white areas.
>
> "b. The possibilities for providing a primary nighttime service in those white areas at sufficient distance from the class I-A station to permit requisite protection of the generally usable portion of the existing station's skywave service -- i.e., the service area within its 0.5-mv/m, 50-percent skywave contour.
>
> "c. Due protection to existing cochannel U.S. daytime stations and to U.S. stations on adjacent channels.
>
> "d. Consideration of adjacent-channel interference to stations located in neighboring countries, and to foreign cochannel stations to which the United States is committed,

> under international agreements, to afford a stated degree of protection.
>
> "e. Avoidance of adjacent-channel interference among new unlimited-time stations assigned to the class I-A clear channels.
>
> "f. The location of white areas apparently beyond the reach of foreseeable new stations which could provide a nighttime primary service.
>
> "g. Existing skywave services in the foregoing areas and the consequent benefits from improved additional skywave services.
>
> "h. The location of class I-A stations so situated -- with reference to geographic relationships to the needful areas and cochannel and adjacent-channel domestic and foreign interference considerations -- as to indicate that they would be best adapted to the provision of additional and improved skywave services to the needful areas.
>
> "27. In the case of no single channel would all of the foregoing determinants uniformly indicate that it be earmarked for additional unlimited-time assignment or that it be held in status quo for future consideration of alternative action. In each case we have arrived at our judgment by the painstaking process of determining and evaluating all the pertinent factors and deciding,on net balance, which course would best serve the public interest both in usage of the individual channel and in terms of the resultant assembled pattern of additional nighttime primary services, on the one hand, and the potential for additional and improved skywave services in needful areas, on the other hand. In weighing our choices of channels to be left at this time in status quo we have taken into account the desirability of endeavoring to preserve the potential of at least four reasonably reliable and satisfactory skywave services throughout all white areas."

The Commission noted that in arriving at the selection of Class I-A clear channels for duplication and for status quo, it "scrutinized with great care the entire record of this proceeding, including testimony, exhibits, briefs, oral argument, comments, and other pleadings which . . . have included diverse alternative and counter proposals;" and that "considering all pertinent factors and submissions, and taking into account the skywave services presently received", it determined that the public interest will be served by not duplicating some 12 frequencies (including 830 kc). The Commission stressed that by such action "the potential for widespread improvement in skywave service is thus preserved for future evaluation." (R. 4097-4098, Pars. 28 and 29).[3]

In selecting 720 kc for duplication, the Commission noted (R. 4099, Par. 37):

> "37. The class I-A stations on 670, 720, 780, and 890 kc are located in Chicago and, while they are, of course, west of the group just discussed, they still offer useful opportunity for assignment of unlimited-time stations in the far West. Several Western States will meet spacing requirements and, additionally, the useful skywave service provided by the Chicago I-A stations is confined to the region of the Great Lakes, which insures a minimum impact by the new cochannel, unlimited-time, class II stations to their skywave service. An added consideration in selecting the Chicago I-A frequencies for duplication is the limited potential which they have for improving skywave service in the areas which need it. Adjacent-channel class I operations in New York would limit radiation to the East and requirements of protection to stations in Cuba and Mexico would limit radiation to the South. Their potential for improving skywave service to the West, moreover, is not so great as that of the class I-A channels on which we are presently retaining the status quo."

Station KFMB has been operating on 540 kc in San Diego, California. However, pursuant to the recent United States-Mexican Broadcasting Agreement, the Government of Mexico has been accorded a Class I-A priority on this Channel. Thus, the Commission was presented with the problem of providing a suitable replacement frequency for KFMB, in order that it might continue to render its service to the San Diego community. The Commission proposes in the Clear Channel Report to resolve this special problem arising from the entry into force of the above Agreement by permitting KFMB to employ the Class I-A frequency 760 kc. In deciding on this particular frequency, the Commission explained:

---

[3] The Commission also noted in connection with 830 kc, that there is pending an adjudicatory proceeding involving WNYC's use of that frequency (R. 4098, Par. 31).

> "A painstakingly careful review of all the availabilities persuades us that 760 kc is the preferable choice, taking into account requirements of protection to Mexican stations on other Class I-A channels, the availabilities of some other Class I-A clear channels for new Class II-A stations at other places in the United States, domestic and Canadian co-channel and adjacent-channel limitations on the allocation of individual Class I-A clear channels, and related considerations. We, accordingly, herein assign 760 kc for use for a Class II unlimited-time operation at San Diego." (R. 4115, Par. 78).

On October 16, 1961, WGN and WJR each filed a Petition for Reconsideration and Conditional Request for Evidentiary Hearing, and, as members of Clear Channel Broadcasting Service (CCBS), filed a Petition for Rehearing (R. 4200-4294, 4357-4409). On November 6, 1961, Midwest filed an Opposition thereto (R. 4696-4702).

On November 21, 1962, the Commission adopted a Memorandum Opinion and Order reaffirming its prior Report and Order released September 14, 1961 (R. 5071). In this document the Commission carefully re-examined its basic decision. Thus, in response to petitions for reconsideration the Commission stated (R. 5075, Par. 16):

> "To bring about badly needed improvement in nighttime service various alternatives have been suggested, which resolve generally into duplication, higher power, or some combination thereof. Higher power offers improvements in nighttime secondary service while duplication holds out the promise of limited added nighttime primary service. Moreover, questions of social and economic import arise in the higher power approach which complicate the simple engineering choice. Duplication of all I-A channels would not bring primary service to all white areas and would largely preclude the benefits of added secondary service which higher power could bring. Either alternative leaves much to be desired and we have attempted through a judicious combination of the possible advantages of the two approaches to reap some of the benefits of each. Thus, through duplication we extend to as many persons as possible the benefits of a first nighttime primary service. This type of service is better and more to be desired than skywave service. We have at the same time, however, retained the status quo on a sufficient number of channels

> which, should economic, social, and other considerations indicate higher power is in the public interest, can bring a total of four skywave services to practically the entire United States."

The Commission undertook a complete reappraisal, frequency by frequency, of the use to which each of the Class I-A clear channels should be put, and upon such reappraisal determined, once again, that the frequency 830 kc should not be duplicated but should be retained in the reserved group. The Commission stated (R. 5075-5076, Par. 17):

> "A complete reappraisal, frequency by frequency, has been made of the use to which each of the Class I-A clear channels should be put. A few channels, whether because of technical or international considerations or for policy reasons, clearly fall within the duplicated or the reserved group as set forth in our basic decision. Some others, while the engineering considerations might not point unmistakeably [sic] to a clear-cut decision that they fall within a particular one of the two categories, have a preponderance of reasons why one solution is to be preferred over the other. In the case of a few, while higher power might be technically feasible, the area they would serve with a secondary service at higher power is otherwise provided for either by present operations or by possible operations at higher power on the reserved frequencies. In a very few cases the choice appears rather difficult when considering the channel on an individual basis. However, applying the general guidelines mentioned at paragraph 26 of the Report and Order of September, 1961, and considering how the two basic objectives are met by the combination of frequencies contained within each group, we are convinced that the decisions, while not easy, are sound.

With specific reference to duplication of 720 kc, the Commission reaffirmed its prior action, noting (R. 5078-5079, Pars. 28-30):

> "WMAQ, Chicago, is the Class I-A station on 670 kc. Because the same general considerations also apply to the other I-A stations in Chicago, we shall discuss them as a group. Those stations are WGN on 720 kc, WBBM on 780 kc, and WLS on 890 kc. Generally speaking, these stations could be used either for duplication or to offer potential skywave service at higher power. We have reiterated our purpose to bring additional nighttime primary service to white areas while reserving sufficient frequencies having a

potential to provide four type E skyway services substantially to the entire country.

> "On balance, our reconsideration has led us to believe that the original disposition made of these frequencies is the better choice. Class II-A stations are proposed thereon for Idaho, Nevada, and Utah. It is technically feasible and desirable that they be used to provide nighttime primary service to the underserved areas of the West.
>
> "As to their skywave service potential at higher power, protection requirements to foreign and domestic adjacent channel assignments would limit radiation eastward and to the south. While they could directionalize toward the West, their potential for improving skywave service to the West is not so great as that of some other Class I-A channels on which we are presently retaining the status quo, namely 640, 820, 830, 1040, 1160, and 1200 kc. As to those frequencies just named, the considerations pointed toward no present duplication. Thus, the Chicago stations can serve our basic objective and are not needed, nor as well suited as some others, for providing skywave service to the West should higher power someday be authorized."

Similarly, with specific reference to duplication of 760 kc, the Commission reaffirmed its prior action, stating (R. 5080-5081, Pars. 38-39):

> "Our decision of September, 1961 went into considerable detail as to why this frequency was selected for use by KFMB, San Diego, California, which loses its present frequency (540 kc) under the terms of the agreement with Mexico. An exhaustive inquiry, taking into account the many factors detailed in our Report and Order, revealed that, of the I-A frequencies, only 760 kc and 830 kc were feasible for use at San Diego. The whole duplication plan adopted provides for nighttime operation on Class I-A frequencies by no more than one station in addition to the dominant I-A station. As discussed below, WNYC, New York City presently operates some nighttime hours on 830 kc and, under the policy adopted, further duplication thereon is precluded at this time. The obvious result is that 760 kc is the only I-A frequency available to solve this unique problem.
>
> "Further, a study made of all frequencies below 760 kc shows the only other frequency available for such use, because of domestic and international co-channel and adjacent channel restrictions, is 550 kc. Radiation by KFMB on 550 kc would be considerably restricted northward by co-channel operation of KAFY, Bakersfield, California and eastward by co-channel KOY, Phoenix, Arizona. KFMB could not, therefore,

> operate with its present 5 kw and afford these stations the required protection unless it were to directionalize southward and to the west -- in which case much of its signal would be wasted over the Pacific Ocean. (Studies presented by KFMB in this proceeding show such move would result in a reduction in daytime coverage from 18,342 square miles to 1921 square miles and in nighttime coverage from 884 square miles to 516 square miles.)"

Thus, the Commission concluded in its action on the Petition for Reconsideration (R. 5091-5092, Pars. 84 and 85):

> "We adhere to our belief that, on balance, the adopted solution represents the best result available at this time. The Report and Order read in its entirety and in the light of the above language makes unnecessary any more detailed rebuttal of many of the arguments now advanced that some different solution should have been adopted. In this connection, some petitioners simply restate the case for higher power. Others ask that more than one Class II station be permitted on a frequency. Nothing new was found in these requests which had not been fully presented to the Commission for its consideration before the Report and Order was adopted.
>
> "A majority of the Commission sincerely believes that this decision serves the public interest. There is no easy or clear-cut solution to the many problems involved. For the reasons given in the September, 1961 Report and Order and as further stated herein, we adhere to our decision in all respects. We further reaffirm the conclusion that we are unable to determine that higher power is warranted at this time but that -- if it proves to be in the public interest at some future date -- we have retained freedom of action on a sufficient number of channels which, in the combination carefully selected, will enable the claimed benefits of higher power to be realized."

SUMMARY OF ARGUMENT

The Commission's action in the Clear Channel case represents a wholly proper exercise of its rule-making authority. WJR and WGN were accorded due notice of the Commission's action pursuant to the Third Notice of Further Rule Making issued September 22, 1959, and were afforded full opportunity to participate in the rule-making proceeding.

The Commission's Report and Order of September 14, 1961, sets forth detailed and adequate reasons for the Commission's choice of those channels duplicated. Moreover, in its Memorandum Opinion and Order of November 21, 1962, in response to appellant-petitioners' petition for reconsideration, the Commission undertook a careful reappraisal of its action, frequency by frequency, again explaining in detail the bases for its choice.

WJR and WGN have thus not established that the Commission's action constitutes an abuse of its broad discretion. Hence, it is not for the Court to substitute its judgment for the Commission's expertise in this field.

ARGUMENT

I

The Commission's Action Duplicating 720 kc and 760 kc, and Retaining 830 kc in Status Quo, Is a Wholly Proper Exercise of the Agency's Rule-Making Authority.

There is no merit to appellant-petitioner's contention (Br. pp. 39-40) that the Commission did not afford proper consideration to other Clear Channel frequencies which might have been more suitable for duplication than 720 kc and 760 kc. The Commission's action duplicating 720 kc and 760 kc, and retaining 830 kc in status quo, represents a wholly proper exercise of the Commission's rule-making authority pursuant to Sections 303(f) and 303(r) of the Communications Act (47 U.S.C. §§ 303(f) and 303(r)) and the Administrative Procedure Act (5 U.S.C. § 1003)). See Logansport Broadcasting Corp. v. United States, 93 U.S. App. D.C. 342, 210 F.2d 24 (1954), Peoples Broadcasting Co. v. United States, 93 App. D.C. 78, 209 F.2d 286 (1953) and American Broadcasting Co., Inc. v. FCC, 89 App. D.C. 298, 191 F.2d 492 (1951).

There can be no question that the Commission has authority to adopt a nationwide Clear Channel allocation plan in the context of a general rule-making proceeding. As this Court noted in Peoples Broadcasting Co. v. United States, supra, in connection with the Commission's adoption of a nationwide television allocation plan:

> "The purposes of the creation of the Commission, as expressed by Congress, and the mandates pursuant to the purposes, enumerated at great length in the statute, furnish ample support for this action."

See also Logansport Broadcasting Corp. v. United States, supra, and American Broadcasting Co., Inc. v. FCC, supra.

The Commission's Clear Channel rule-making proceeding in Docket 6741 comported with all requirements of Section 4 of the Administrative Procedure Act (5 U.S.C. § 1003). Thus, the Third Notice of Further Rule Making issued September 22, 1959 afforded WJR and WGN adequate notice of the Commission's proposed action. Appellants-petitioners had full opportunity to address themselves to this Notice and did so by the filing of extensive comments and reply comments which received careful consideration by the Commission.[4] The Commission's Report and Order released September 14, 1961 in the Clear Channel proceeding set forth detailed reasons for the Commission action, including the specific bases for duplicating 720 kc and 760 kc.[5]

Moreover, appellants-petitioners filed petitions for reconsideration with respect to the Commission's Report and Order, and the Commission in its Memorandum Opinion and Order of November 21, 1962 denying these petitions, carefully considered and disposed of each of the contentions raised by WJR and WGN. Indeed, the Commission undertook a painstaking reappraisal of its action, frequency by frequency, again detailing the reason for the Commission's choice of the channels to be duplicated and those to be retained in status quo. Clearly, therefore, WJR and WGN were accorded their full right to be heard in accordance with rule-making procedures. Thus their contention that their particular frequencies should not have been selected for duplication do not demonstrate an abuse of discretion on the part of the Commission.

---

[4] Midwest also filed extensive and detailed comments and reply comments establishing that the public interest required that 830 kc not be duplicated.

[5] The Commission in its Report and Order duplicating 720 kc and 760 kc, among others, gave specific reasons for its choice with respect to each of the clear channels selected (R. 4098, 4099,4113-4123, Pars. 30-33, 36-37, 71-94).

This Court recognized in American Broadcasting Co., Inc. v. FCC, supra, that the ultimate disposition of the Clear Channel controversy rests within the discretionary power of the Commission. The Commission has now acted, and its action is supported by substantial evidence. This being so, the Court's duty is at an end. See National Broadcasting Co. v. United States, 319 U.S. 190, 224 (1943); Logansport Broadcasting Corp. v. United States, supra. As the Court explained in Coastal Bend Television Co. v. F.C.C., 98 U.S. App. D.C. 251, 234 F.2d 686 (1956), in connection with a television rule-making proceeding:

> "But we think that the Commission's decision to adhere to the 1952 allocation for the time being, as reflected in its refusal to institute a 'freeze' on construction permits for VHF stations to prevent competition with existing UHF stations, is well within its statutory authority: its decision was based on its finding that the VHF stations would bring additional television service to a significant number of people. True, there would be loss to the public if VHF competition should destroy existing UHF stations before the current rule-making proceeding decides the ultimate fate of UHF television. But whether one factor should outweigh the other is precisely the sort of question which Congress, by employing the broad language of Section 303, wished to commit to the discretion of an expert administrative agency, not the courts. It is for the Commission, not the courts, to pass on the wisdom of the channel allocation scheme. National Broadcasting Co. v. United States, 319 U.S. 190, 224-25 (1943). So long as the Commission's action in such an area of discretion has a reasonable factual and legal basis, we may not overturn it."

Similarly as the Court stated in Springfield Television Broadcasting Corp. v. FCC, 104 U.S. App. D.C. 13, 259 F.2d 170 (1958), in passing upon a deintermixture action by the Commission:

> "Before us the Commission emphasizes, rightly, that it is impossible to use rigid criteria as the basis for a decision

> to deintermix or not to deintermix any particular community, because of the widely varying circumstances in individual markets and the numerous factors which bear on the choice in each area. This is a simple factual truth. The problem is an evaluation of factors, differing in each situation. Congress put that evaluation primarily in the hands of its agent, the Commission. It did not authorize the courts to reappraise the merits of such conclusion." (Emphasis added.)

In sum, the Commission's action meets all requirements of the Communications Act and the Administrative Procedure Act. The Commission, within its discretion, and upon careful evaluation of the full record, has reached its conclusion and has adequately stated its reasons therefor. In such circumstances the decision of the expert body should not be disturbed.

CONCLUSION

For the foregoing reasons, the Commission's Order should be affirmed.

Respectfully submitted,

PETER SHUEBRUK

HERBERT M. SCHULKIND

1612 K St., N. W.
Washington 6, D. C.

Attorneys for Intervenor,
MIDWEST RADIO-TELEVISION, INC.

April 29, 1963.

BRIEF OF THE CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM, WNYC, INTERVENOR

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1962

No. 17,500

THE GOODWILL STATIONS, INC., AND WGN, INC., *Petitioners*,

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, *Respondents*.

CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM, *Intervenor*.

AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC., WXYZ, INC., AND WLS, INC., *Intervenors*.

WESTINGHOUSE BROADCASTING COMPANY, INC., *Intervenor*.

ON APPEAL FROM A DECISION AND ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION

Leo A. Larkin,
Corporation Counsel,
City of New York.

Charles S. Rhyne,
Thomas P. Brown, III,
Alfred J. Tighe, Jr.,
Rhyne & Rhyne,
400 Hill Building,
Washington 6, D. C.

BRIEF FOR APPELLEE INTERVENOR

Statement of the Questions Presented

Did the Commission's Orders, adopted September 13, 1961 and November 21, 1962 in Docket 6741 terminating a proceeding, commenced as a general hearing to resolve issues among others raised by the fact that large areas of the United States were without primary standard broadcast service and by applications for power in excess of 50 kw and for operation of additional stations in Class 1-A Clear Channel frequencies:

A. Violate § 307(b) or § 303(f) of the Communications Act by authorizing one additional station to operate day and night on each of 13 of the 25 Class 1-A frequencies and by refusing to amend the rule limiting the power of Class 1-A stations to 50 kw.

B. Erroneously fail to give due consideration to House Resolution 714 passed July 2, 1962 which expressed the sense of the House of Representatives that (1) the Commission was free notwithstanding a 1938 Senate Resolution to the contrary to authorize power in excess of 50 kw if found to be in the public interest and (2) the Commission should not authorize any additional full-time stations on any of the 25 Class 1-A frequencies for a period of a year so that the Commission would have an opportunity to reconsider its September 13, 1961 Order in light of House Resolution 714 and so that Class 1-A stations would have an opportunity to file applications for higher power?

C. Erroneously make findings and conclusions unsupported by record evidence or erroneously fail to set forth (1) rational reasons supporting the decision or (2) findings supporting the conclusions?

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BRIEF OF THE CITY OF NEW YORK MUNICIPAL BROADCASTING SYSTEM, WNYC, INTERVENOR

Statement of the Case

This proceeding was instituted by the Federal Communications Commission (hereinafter referred to as the Commission) on February 20, 1945 to determine whether or not it would serve the public interest to amend the rules governing the use of the standard broadcast frequencies designated as "clear channels", and if so, in what respect. It has been one of the longest and most exhaustive proceedings in the history of the Commission. The basic conflict involves those who urged that the principal objective of providing satisfactory nighttime service to areas lacking such service is most likely to be obtained by improvements in the capacity of clear channel stations, particularly class 1-A stations, to provide good skywave signals to wide areas by permitting the clear channel stations to operate at substantially increased power and by limiting, and at night excluding, co-channel stations. The conflicting view called for an increase in the number of unlimited time stations on the clear channel.

During 1946 and 1947 extended hearings were held and a voluminous record was compiled. Further Notice Of Proposed Rule Making was issued April 15, 1958 inviting comments on new proposals. Many comments and other pleadings were filed regarding this new notice. The proceeding then entered its third phase with the release on September 22, 1959 of the Commission's Redefined Proposal For Settlement of the clear channel question. In response to this invitation for comments, more than 100 comments and 40 replies were filed. However, the basic dispute continued to be whether the additional needed service could better be supplied by permitting clear channels to operate at higher power or by permitting operation of an additional unlimited time station or stations on the clear channel frequencies.

Intervenor Radio Station WNYC, the municipally owned, non-commercial station of the City of New York has been operating on a clear channel frequency (on 810 kc until the North American Regional Broadcasting Agreement became effective in 1941 and since then on 830 kc) as a Class II Station for more than 25 years. During all of this period Radio Station WCCO Minneapolis, Minnesota, licensed as a Class 1-A station, has operated on the same frequency. Station WNYC is regularly licensed to operate from the hours of sunrise at New York City until the hours of sunset at Minneapolis. However, for approximately 20 years, the Commission has periodically but continuously issued Special Service Authorizations to WNYC effectively authorizing the station to broadcast from 6 a.m. to 10 p.m. Eastern Standard Time.

On September 13, 1961 the Commission issued its final comprehensive Report and Order amending its rules relating to the classification, location and use of the class 1-A channels. In particular, the Commission amended Rule 3.22 assigning one class 2-A station to each of 13 clear channels listed therein. The class 2-A stations are located in the Western States as designated in the Table of Assignments. No action was taken with respect to 830 kc because of the pendency of an adjudicatory proceeding involving WNYC's use of that frequency during nighttime hours. However, the Commission in Note 2 (Appendix Page 9) stated that "In view of special circumstances arising from the provision of a service during some nighttime hours by a Class II station operating on 830 kc at New York, New York, (i.e. from 6:00 a.m. to local sunrise and from sunset at Minneapolis to 10:00 p.m. E.S.T.) applications will be accepted for such operation: *Provided,* That they will be acted upon only after and in light of the decision reached in Docket No. 11227."

Note 2 to the Report and Order is of special significance to the Intervenor and paves the way procedurally for the acceptance of applications for nighttime hours of operation on 830 kc of the City of New York Municipal Broadcasting System. It recognizes the facts that:

> a) For over 20 years the Commission has consistently recognized that the need of the City of New York for WNYC's unique program service was so great that the station was actually entitled to receive special service authorization to operate beyond its regularly

licensed hours and that this should be made a permanent operation, contingent upon the decision in the pending adjudicatory proceeding wherein consideration was being given to balancing the cause of WCCO against the service WNYC renders during the nighttime hours, and

b) That the public interest be served by continuing to permit WNYC nighttime operation and for which no provision has been made in the AM rules governing the use of class 1-A frequencies.

Various petitions for rehearing, reconsideration, partial reconsideration and stay of the effective date of the Report and Order adopted September 13, 1961 including a petition for reconsideration and partial stay of WCCO were filed. The Commission disposed of these matters, including the denial of WCCO's petition, November 29, 1962.

Statutes Involved

The Communications Act of 1934, as amended, June 19, 1934 c. 652, Title III, § 303, 48 Stat. 1082; 47 U.S.C. § 303.

> "Except as otherwise provided in this chapter, the Commission from time to time as public convenience, interest, or necessity requires, shall—d) Determine the location of classes of stations or individual stations; g) Study the new uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest; h) Have authority to establish areas or zones to be served by any stations; . . ."

47 U.S.C. § 307

> "(a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limita-

tions of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."

Statement of Points

The Commission in its Report and Order and Memorandum Opinion and Order in Docket 6741 did not allocate frequencies contrary to the statutory mandate; nor in an arbitrary, capricious, or an unreasonable manner; nor abuse its administrative discretion; and its findings were fully supported by substantial evidence of record in the proceedings.

Summary of the Argument

The Clear Channel Proceeding has been one of the longest and most exhaustive proceedings in the history of the Federal Communications Commission. It is now in its 18th year. Many hearings have been held, much evidence has been presented, many briefs have been filed during this period. No one was denied an opportunity to present his views. The Commission's reports and orders appealed from are well reasoned and the basis for their decision is clearly and succinctly set forth. The Commission has the power to effect its order in this proceeding. This being the case Intervenor, the City of New York Municipal Broadcasting System supports in general the decision of the Commission and in particular, that section of the Report and Order which opens the way for WNYC to file an application for permanent nighttime operation.

ARGUMENT

I

The Nature of This Proceeding

As stated previously, the Commission instituted the Clear Channel Proceeding on February 20, 1945 for the purpose of resolving the question of the proper and most efficient use of the clear channel frequencies. The order instituting the proceeding was so extensive that it opened the way for consideration of solutions ranging all the way between the extremes of exclusive nighttime use of selected clear channels by single stations operating at substantially higher power than the present maximum of 50 kw and the reclassification of selected clear channels to local channels on which it would be possible to assign 150 stations each and a maximum power of 250 kw. Testimony was taken during extended hearings during 1946 and 1947 and a voluminous record was compiled. In late 1947 the "daytime skywave" proceeding, Docket No. 8333, which had earlier that year been separately initiated to determine whether and the extent to which limitations should be imposed upon daytime skywave radiations towards class 1-A and class 1-B stations, was joined with the clear channel proceeding. Extensive oral argument before the Commission was held early in 1948 on the consolidated record. The daytime skywave phase was severed in 1953. The Commission, on April 15, 1958, reopened the clear channel record and narrowed the proceedings for this the second phase. Additional comments and other pleadings were filed pursuant to a new notice issued by the Commission. And in September of 1959 a further notice was issued and more comments (over a hundred) were filed. In the course of the proceedings, the Commission, because of the complexity as well as the importance of the questions involved, disregarded its normal procedures to permit ample opportunity for all interested parties to be heard orally and through written documents. In short, the proceedings were exhaustive and extremely comprehensive.

The Commission found in a comprehensive Report and Order that higher power would offer improvements in nighttime secondary service to the so-called "white areas" of the country and that duplication on clear channel frequencies would add new nighttime primary service. It stated also that the obvious questions of social and economic import arising from the higher power approach complicated the proceeding to the extent that a simple engineering decision was impossible. As stated by the Commission:

> "Duplication of all 1-A channels would not bring primary service to all white areas and would largely preclude the benefits of added secondary service which higher power could bring. Either alternative leaves much to be desired and we have attempted through a judicious combination of the possible advantages of the two approaches to reap some of the benefits of each. Thus, through duplication we extend to as many persons as possible the benefits of a first nighttime primary service. This type of service is better and more to be desired than skywave service. We have at the same time, however, retained the status quo on a sufficient number of channels which should economic, social and other considerations indicate higher power is in the public interest can bring a total of four skywave services to practically the entire United States." (Memorandum Opinion and Order, Nov. 21, 1962, p. 5)

The Report and Order also includes an analysis, frequency by frequency, of each of the class 1-A clear channels and the reason for allocation or non-allocation in each case.

II

The Commission's Decision Does Not Violate the Act Though Not Solving Entire Problem

The Commission's decision was not in violation of § 307 (b) of the Act because the entire problem of providing service to "white areas" was not solved in one Order. As indicated by the Commission at p. 3 of its Memorandum Opinion and Order released November 28, 1962, the majority of the Commission felt and still feels that further studies are needed to determine whether such authorization of higher power would be in the public interest. This is a continuing study. The first step has been taken. Simply because the Commission has not been able to solve the whole problem is not sufficient reason to contend that the decision is illegal.

III

Selection of New Stations and Locations Not Arbitrary, Capricious or Unreasonable

The Commission's selection in the exercise of administrative discretion of a number of new stations and the location of each was not arbitrary, capricious, or unreasonable.

The argument made by appellants in this situation boils down to the premise that since the Commission assigned additional Class II stations to 13 of the Class 1-A channels it also had to assign them to the 12 other channels.

The careful analysis of each channel set forth in the Commission's two reports and orders appealed from and the exhaustiveness and comprehensiveness of these documents rebuts the contention that the Commission's action was arbitrary, capricious, and unreasonable. The reasons for maintaining the status quo on the 12 remaining 1-A channels is because these channels may by their nature be adaptable to a different usage than that assigned to the other 13 and therefore, they remain reserved for implementation of and in accordance with the solutions to be obtained from the continuing study the Commission is making of the whole problem.

IV

Congressional Resolutions Not Binding on Commission

The decision of the Commission was not illegal because of House Resolution 714. (87th Cong. 2d Sess., 1962). A resolution of one House of Congress is not legally binding on the Commission. Moreover, the Senate Resolution, (S. Res. 294, 75th Cong., 3d Sess., 1938) as to the 50 kw limitation adopted in 1938, conflicts with the House Resolution and each is of equivalent legal dignity.

However, the action of the Commission indicates that the House Resolution was accorded due weight. The majority of the Commission believed that additional unlimited time assignment can be effectuated without substantial impairment of the wide area of service rendered by the 1-A stations and without impingement on the possibility of sufficient improvement of service through higher power, if that is later concluded to be appropriate, on the other 12 channels better suited for that approach, and perhaps also on some of the 13 now duplicated. The Commission, however, in deference to Congress, and giving due consideration to the 1962 Resolution expressing the sense of the House that the Commission refrain from authorizing additional nighttime stations on the Class 1-A clear channels until July 2, 1963, while continuing to accept Class 2-A applications agreed to hold them in abeyance until July 2, 1963, thus giving Congress additional opportunity to enact legislation concerning this matter should they desire to do so.

V

Commissions's Decision Equitable and Just to Intervenor's Peculiar Interests

The Commission's decision reflects equitable treatment of Intervenor's peculiar interests. Radio Station WNYC, a municipally owned non-commercial station of the City of New York, has been operating on a clear channel frequency for more than 25 years. During all this period Radio Station WCCO of Minneapolis, Minnesota has operated on the same frequency. WCCO is a Class 1-A station and is one of the clear channel stations considered in this proceeding. In addition, WNYC is regularly licensed and operated from the hours of sunrise in the New York City area until the hours of sunset at Minneapolis. For approximately 20 years, however, the Commission has issued Special Service Authorizations to WNYC effectively authorizing the station to broadcast from 6 A.M. to 10 P.M., Eastern Standard Time. Special Service Authorizations were originally issued because of the importance of WNYC's specialized programing to the war effort. After the end of World War II, Special Service Authorizations continued to be granted primarily because of the pendency of the instant proceeding, Docket No. 6741. The continuation of such Special Service Authorization is now at issue before the Commission in Docket No. 11227. An initial decision of July 8, 1957, in Docket 11227 granted the applications for Special Service Authorization principally on the grounds that there are special and compelling needs and requirements for WNYC's programs, and that WNYC could not be authorized for nighttime broadcasting on a regularly licensed basis during the pendency of the clear channel case. For over 20 years the Commission has consistently recognized that the need of the City of New York for WNYC's unique program service was so great that the station was actually entitled to receive Special Service Authorization to operate beyond its regularly licensed hours. However, the question of the facilities to be ultimately assigned to WNYC has been tied to the ultimate decision in this case.

The Commission's Report and Order in this proceeding, together with Note 2 to Section 3.25 (Appendix, p. 9) substantiates this fact and paves the way procedurally for the acceptance for applications for regular nighttime hours of operation on 830 kc by WNYC at New York City.

This action by the Commission was eminently justified and supported by the years and years of unique service WNYC has rendered to New York City and by the fact that it does not injure WCCO or deprive any person of primary radio service. It is this section of the decision which the Intervenor particularly does not wish to see overturned for the reasons stated previously.

Intervenor does not consider the statement by the Commission at page 12 of its November 28, 1962 Memorandum Opinion and Order relative to the KKMB problem to be anything further than an example of the Commission's application of its presently existing policy as it has stated. The Commission's policy is against placing more than one full-time station on a Class 1-A channel. WNYC is now broadcasting during certain nighttime hours and a provision has been made in the rules governing the use of Class 1-A frequencies by the proceeding to pave the way procedurally for the acceptance of an application of WNYC for regular operation on these nighttime hours. While WNYC is not now a full-time station, nevertheless, its nighttime operations give it some of the attributes of a full-time station and it is conceivable that in the future under certain special circumstances, WNYC might become a fulltime station. This being the case, and with this possibility open, the statement by the Commission referred to above is an eminently reasonable one.

Conclusion

No appellant has specifically contended that the section of the Commission's Report and Order which paves the way procedurally for WNYC to file an application for regular operation during certain nighttime hours should be deleted, stricken or withdrawn as being illegal or inequitable. Nevertheless, if appellants contentions are sustained with respect to the questions raised, the entire Commission's Report and Order in the clear channel case, that is, the Commission's Report and Order released September 14, 1961 in Docket No. 6741, as affirmed in its Memorandum Opinion and Order released November 28, 1962, could be reversed. Accordingly, Intervenor Appellee requests that this Court affirm the Commission's Order. In the alternative and notwithstanding any other disposition of the Commission's Report and Order which this Court might make with regard to the appellant's contentions, Intervenor Appellee requests that the portion of the Report and Order of the Commission which relates to WNYC be sustained since it has not been attacked specifically.

Respectfully submitted,

Leo A. Larkin,
Corporation Counsel,
City of New York.

Charles S. Rhyne,
Thomas P. Brown, III,
Alfred J. Tighe, Jr.,
Rhyne & Rhyne,
400 Hill Building,
Washington 6, D. C.

BRIEF FOR INTERVENOR TRANSCONTINENT TELEVISION CORPORATION

In The

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 17,[illegible], 17,[illegible], 17,[illegible]

THE GOODWILL STATIONS, INC.,
WGN, INC.,

Appellants-Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee-Respondent,

and

UNITED STATES OF AMERICA,

Respondent,

TRANSCONTINENT TELEVISION CORPORATION,
AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.,
MIDWEST RADIO-TELEVISION, INC., et al.,

Intervenors.

Appeals From and Joint Petition
for Review of Orders of the
Federal Communications Commission.

Of Counsel:
Covington & Burling
701 Union Trust Building
Washington, D. C.

[illegible]
[illegible]
701 Union Trust Building
Washington, D.C.

Attorneys for Intervenor,
Transcontinent Television
Corporation.

April [illegible], 19[illegible]

Questions Presented

The questions presented have been stipulated and as stipulated are correctly stated by Appellants-Petitioners (including the view of Transcontinent Television Corporation and other parties that the statement of issue 1(a) should end at the words "to 50 kw").

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* Cases or authorities chiefly relied on are marked by asterisks.

In The

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 17,498, 17,499, 17,500

THE GOODWILL STATIONS, INC., and
WGN, INC.,

Appellants-Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION,

Appellee-Respondent,

and

UNITED STATES OF AMERICA,

Respondent.

TRANSCONTINENT TELEVISION CORPORATION,
AMERICAN BROADCASTING-PARAMOUNT THEATRES, INC.,
MIDWEST RADIO-TELEVISION, INC., et al.,

Intervenors.

Appeals From and Joint Petition to Review
Order of the Federal
Communications Commission

BRIEF FOR INTERVENOR

TRANSCONTINENT TELEVISION CORPORATION

COUNTER-STATEMENT OF THE CASE

Intervenor Transcontinent Television Corporation is licensee of standard (AM) broadcast station KFMB, San Diego, California.[1] KFMB is a Class II station providing a regional service to Southern California, both day and night, on the frequency 540 kc. Under the terms of the 1961 broadcasting agreement with Mexico, T.I.A.S. No. 4777, the frequency 540 kc has been assigned to Mexico as a Class I-A clear channel and the United States has been precluded from assigning that frequency in a defined area of the southwestern United States, including San Diego. A substitute frequency for KFMB is therefore necessary. Among other things, the Report and Order here complained of makes such a substitute available by amending the Commission's rules so as to allow KFMB to share 760 kc with WJR,[2] Detroit, Michigan, the Class I-A station which has heretofore had exclusive fulltime use of that frequency.

A. The Mexican Treaty Requires a New Frequency for KFMB.

KFMB has been authorized to operate on 540 kc for nearly ten years.[3] Prior to that time it operated on 550 kc. The frequency 540 kc was not employed for broadcast purposes until the Atlantic City International Telecommunications Convention of 1947 allocated the channel for broadcast use, effective January 1, 1949. Before that effective date, however, the Mexican government authorized a station on 540 kc in an apparent effort to establish a prior claim to the frequency. In order to protect United States rights, the Commission objected to the Mexican assignment under international procedures and invited applicants to make use of the channel in the United States (R. 1060). KFMB filed such an application. In December, 1953, the FCC granted KFMB's application and assured KFMB that, although Mexico would probably protest the grant, "the Commission, however, is cognizant of this possibility and believes that the validity of the KFMB assignment can be upheld" (R. 1061, 3157). KFMB accordingly shifted to 540 kc and extended its service to substantial areas and populations in Southern California. (E.g., R. 1063-65, 1077, 3162).

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[1] Transcontinent and its predecessors in interest (Wrather-Alvarez Broadcasting, Inc., and Marietta Broadcasting, Inc.) which participated in various stages of the proceedings before the Federal Communications Commission will normally be referred to herein as "KFMB".

[2] Appellant-petitioner The Goodwill Stations, Inc., licensee of WJR, will normally be referred to as "WJR."

[3] For the following narrative of the history of KFMB and the Mexican treaty, see generally R. 1059-63, 3153-60, 3164 as well as specific citations given.

Despite the confidence expressed by the Commission in 1953 as to the validity of KFMB's assignment, United States representatives found it necessary, in order to achieve a treaty with Mexico which would protect all United States AM radio broadcast frequencies (R. 4114), to agree, among other things, that the United States would not use 540 kc within a defined area of the southwestern United States (including San Diego). An agreement with Mexico which included such an undertaking was signed in 1957 (R. 3158). As the Chairman of the United States delegation which negotiated the agreement quite candidly put it, "KFMB . . . [was] selected to be a sacrificial lamb."[4/]

[4/] North American Regional Broadcasting Agreement, Mexican Broadcasting Agreement: Hearings Before the Subcommittee of the Committee on Foreign Relations, United States Senate, 86th Cong., 2d Sess. at 388 (1960) (hereinafter "Senate Hearings").

Hearings on ratification of this agreement were held by a subcommittee of the Senate Foreign Relations Committee in 1960. KFMB appeared before the subcommittee to support the agreement in principle but to acquaint the Senate with its special effect on KFMB. "In a spirit of flexibility, reason and compromise," KFMB suggested that the subcommittee "seek some assurance" from the FCC that it would give "due consideration . . . to providing reasonably comparable facilities to station KFMB, as a fair substitute for the facilities which it would be required to surrender under the agreement."(R.3158-59, Senate Hearings at 387). At the request of the subcommittee chairman (Senator Morse) – who pointed out that the problem of 540 kc raised the question whether, when a treaty was negotiated which had an adverse impact on some of our own citizens, "are they not entitled to some compensatory relief" (R. 3164, Senate Hearings at 388-89) – the FCC transmitted such an assurance in which it pointed out that it was "entirely possible that KFMB may obtain a frequency on one of the U.S. I-A channels" as a result of the rule making proceeding here under review. (R. 3165, Senate Hearings at 429-32). Thereafter the committee recommended that the Senate ratify the treaty and the Senate did so. The treaty came into effect June 9, 1961. 12 T.I.A.S. at 734.

B. The Provision of an Equitable Substitute Frequency In the Clear Channel Case.

Meanwhile, on April 15, 1958, the FCC had released its Further Notice of Proposed Rule Making in the rule making proceeding here under review, in which it proposed, among other things, to duplicate (i. e., allow a second full-time station on) some Class I-A channels and invited comments on its proposals from interested parties, specifically including parties who believed the Commission's proposals "should not be adopted in the form set forth herein" (R. 1-29). KFMB accordingly filed comments (R. 1056-1086) which (a) demonstrated that the most satisfactory solution for the problem created by the Mexican agreement would be for the Class I-A channel 760 kc to be made available for KFMB (R. 1072-73, 1077-78), (b) pointed out that no frequencies outside the clear channels were available as an equitable substitute (R. 1068) and (c) in particular showed that a return of KFMB to 550 kc would not be adequate or fair. KFMB accordingly urged that the rule making proposed be adopted with the modification that 760 kc or another Class I-A channel be made available for KFMB (R. 1069).

The FCC took no action on the Further Notice of 1958. Instead, on September 22, 1959, it released a Third Notice of Further Proposed Rule Making, which among other things, proposed duplication of Class I-A channels – including 760 kc – by stations in specific locations and invited comments and counterproposals.. (R. 1793-1815). KFMB filed further comments on April 1, 1960 in which it again urged, with detailed supporting data, that the optimum approach would be for KFMB to share the use of 760 kc with WJR (R. 3152-83). KFMB reaffirmed its proposal in reply comments (R. 3566-75).

Reply comments specifically opposing KFMB's 760 kc counterproposal and proposing that Class I-A stations including WJR be allowed to operate at power 15 times that permitted by FCC rules were filed in both the 1958 and 1960 phases of the proceeding by, among others, WJR – either on its own behalf or through its trade association, Clear Channel Broadcasting Service,[5] or both (R. 1427-52, 3511-21, 3664-3707).

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[5] Referred to hereinafter as "CCBS."

On September 14, 1961, the Commission released its Report and Order which determined that 13 of the 25 Class I-A channels should be duplicated (R. 4085-4146). Among these channels was 760 kc, which was allocated to San Diego for use by KFMB. KFMB was required to use a directional antenna to protect against interference to the 0.5 mv/m 50% nighttime skywave contour of WJR (R. 4116) – the same secondary service contour which is protected in the case of Class I-B channel-sharing clear channel stations and the same protection which the Commission required for all other I-A stations required to share channels under its decision (R. 4139). An application for 760 kc has been filed by KFMB but has not been acted on by the Commission, which is withholding action on applications for all the newly shared channels until July, 1963, in deference to H.R. Res. 714, 84th Cong., 2d Sess. (R. 4927). KFMB thus continues to operate on 540 kc.

Petitions for reconsideration of the Commission's action were filed by WJR, CCBS and others, raising issues which have been raised in this Court. In a Memorandum Opinion and Order released November 28, 1962, the Commission denied the petitions for reconsideration and reaffirmed its earlier action, detailing again, channel by channel, the considerations entering into its decision (R. 4925-48).

C. WJR's License As Renewed in 1961 Provided For Sharing of 760 kc.

Meanwhile, WJR's license was due to expire on October 1, 1961, and WJR had filed an application for renewal thereof in June 1961. On October 4, 1961, after the Commission's decision in the rule making proceeding below, the Commission granted this renewal subject to such interference as might be caused to WJR by a station operating from San Diego in the manner contemplated for KFMB. WJR accepted the license as thus conditioned and did not avail itself of the specific procedure afforded by Section 1.64 of the Commission's rules, 47 C.F.R. § 1.64, to challenge the condition and obtain a hearing with respect thereto.[6] It is this conditioned license under which WJR operates today.

D. WJR's Application for "Superpower".

On October 22, 1962, notwithstanding the fact that the Commission had declined to authorize increased power for Class I-A stations and had not yet acted on petitions for reconsideration, WJR and certain other Class I-A stations filed applications for authority to increase power to so-called "superpower" of 750,000 watts, with requests for waiver of the provisions of the FCC's rules setting a maximum power of 50,000 watts (R. 5044-67). Contemporaneously with its action on petitions for reconsideration in the rule making proceeding, the Commission returned these applications, concluding that orderly procedure "required that the merits of authorizing use of power in excess of 50 kw be evaluated in a rule making proceeding previous to firm commitment to that course of action" and suggesting that "advocates of higher power, including prospective licensees, may more appropriately present their case by a petition for rule making in the matter rather than by attempting to obtain consideration of individual applications inconsistent with the present rules." For these and other reasons the Commission concluded that an insufficient showing had been made to warrant waiver of its rules. (R. 5071-73).

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[6] WJR did file a Petition for Reconsideration and Conditional Request for Evidentiary Hearing in the rule making proceeding in which it alluded to the conditioned renewal (R. 4364-65) and attempted to preserve its right to an evidentiary hearing on the duplication of 760 kc which had been ordered in the 1961 Report and Order in the event reconsideration of that Report and Order was denied (R. 4363-67).

STATUTES AND RULES INVOLVED

The relevant parts of statutes involved are correctly set forth by Appellants-Petitioners.

Also involved is Section 4(b) of the Administrative Procedure Act, 60 Stat. 239, 5 U.S.C. § 1003(b):

> "(b) PROCEDURES. – After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection."

In addition, Section 1.64 of the FCC's Rules, 47 C.F.R. § 1.64 is involved and reads as follows:

> "§ 1.64 Partial grants.
>
> Where the Commission without a hearing grants any application in part, or with any privileges, terms, or conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing."

SUMMARY OF ARGUMENT

The basic decision of the Federal Communications Commission (a) that 13 Class I-A clear channels heretofore used full time exclusively by stations all but one of which are located in the portion of the country from Chicago east should be "duplicated" by allowing one full time station west of the Mississippi to share each such channel, (b) that the 12 remaining Class I-A channels should not at this time be duplicated and (c) that power in excess of the maximum allowable under the present rules should not be allowed at this time, was a valid exercise of the Commission's rule making power which was neither arbitrary nor capricious. On the contrary, it was abundantly justified by detailed and well-reasoned opinions which analyzed the factors bearing on the Commission's decision both generally and with respect to each individual channel. Appellants-Petitioners really ask that this Court substitute its judgment in this intricate allocations matter for that of the FCC.

The FCC's specific decision to allow KFMB, San Diego, to share 760 kc full time with WJR, Detroit, was also valid. The Commission found that under all the circumstances 760 kc was the only channel on which fair substitute facilities are available for KFMB to replace its present channel, which has been traded to Mexico in order to achieve an international agreement which would protect all United States AM radio frequencies. The Commission gave an exhaustive and closely reasoned justification for this choice. Nor does this action - making available equivalent service to the people of Southern California - violate § 307(b) of the Communications Act.

WJR is entitled to no further evidentiary hearing before KFMB is allowed to share its channel, because it has already declined to avail itself of an opportunity to such a hearing under the FCC's Rules. When its license was renewed in 1961 the renewed license was conditioned on acceptance of such interference (if any) as might be caused by KFMB operating as proposed. The FCC's Rules provide clear procedures under which WJR could have sought a hearing at that time. WJR did not seek such a hearing. Instead, it merely argued in a petition for reconsideration in the rule making proceeding that the rule changes could not be put into effect without granting it an evidentiary hearing. It cannot in 1963 demand the hearing it could have asked for - but did not - in 1961.

In any event, in the rule making proceeding below WJR received a hearing of the type accorded the licensee in the Transcontinent case, 113 App. D.C. 384, 308 F.2d 339 (1962). It was not only accorded, but took advantage of, full opportunity to address itself to the proposal that KFMB be allowed to share 760 kc. Its contention amounts to no more than the proposition that in a rule making proceeding the FCC cannot adopt a rule which is first presented as a counterproposal. This contention is without merit under this Court's decisions.

The FCC did not err in determining that the grounds advanced by WJR and WGN in support of their applications for power in excess of that allowed by the FCC's Rules were not sufficient to justify waiver of its maximum power rules. The grounds advanced had been exhaustively considered in the rule making proceeding and the FCC had concluded they did not warrant general authorization of higher power at this time. The Commission properly concluded that orderly procedure required the matter of "superpower" to be determined by rule making rather than by individual applications and waiver requests. The Storer case, 351 U.S. 192 (1956), requires no more.

ARGUMENT

I. THE REPORT AND ORDER IN DOCKET 6741 WAS A VALID EXERCISE OF THE COMMISSION'S RULE MAKING POWER UNDER § 303(f) OF THE COMMUNICATIONS ACT, AND NEITHER ARBITRARY NOR CAPRICIOUS.

A. The Commission's Basic Decision Was Valid.

It is difficult to perceive the foundation for the argument that the Commission's basic decision – that it should allow a second station to share each of 13 Class I-A clear channels while reserving judgment on changes with respect to the use of the remaining 12 Class I-A clear channels – was arbitrary or capricious. Although in rule making the Commission need only set forth "a concise general statement of [the rule's] basis and purpose," Administrative Procedure Act, § 4(b), 60 Stat. 239, 5 U.S.C. § 1003(b); Van Curler Broadcasting Corp. v. United States, 98 App. D.C. 432, 236 F.2d 727, cert. denied, 352 U.S. 935 (1956); Logansport Broadcasting Corp. v. United States, 93 App. D.C. 342, 210 F.2d 24 (1954), both the 1961 Report and Order (R. 4085-4146) and the 1962 Memorandum Opinion and Order (R. 4925-48) are exceptionally careful, detailed and explicit in setting forth the Commission's general conclusions and its analysis of the factors bearing on those conclusions. Moreover, both documents work painstakingly through each individual Class I-A channel, justifying in detail the reasons for the specific action taken with respect to that specific channel (R. 4098-99, 4113-23, 4929-40). The Commission's decision to act affirmatively at this time on certain of the clear channels and not on the others was based on its conclusions (1) that efficient conduct of its work necessitated avoidance of the enormous administrative licensing burden which would result from attempting to implement a reallocation of all 25 Class I-A clear channels at once and (2) that a differentiated rather than a simultaneous approach would permit it to avoid precipitate action and to evaluate the effectiveness of the channel sharing approach as a technique for the remaining Class I-A clear channels (R. 4092-93). It thus chose at this stage to dispose first of a group of 13 channels all but one of which are used by stations located in the portion of the country from Chicago east[7/] and as to which it concluded that 13 additional stations could be authorized in some 15 states west of the Mississippi[8/] without significantly affecting the service of the existing Class I-A stations (R. 4092-93). The Commission reserved for further consideration, pending further study and experience with the anticipated new stations, the question of the ultimate disposition of the remaining 12 Class I-A channels[9/] which the Commission's studies have shown are capable of providing four nighttime services to practically all of the United States if increased power should be authorized for the stations occupying those channels (R. 4929, 4942). Thus, the claimed benefits of "superpower" have not been foreclosed by its action (R. 4946). Indeed, the Commission emphasized that, in the light of experience, it might in the future authorize further duplications or might allow increased power for some duplicated

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[7/] Cities in which are located Class I-A stations which would share channels include: New York, Boston, Pittsburgh, Rochester, Philadelphia, Cleveland, St. Louis, Chicago and Detroit.

[8/] The Commission authorized stations to share Class I-A channels in Idaho, Nevada, Alaska, California, North Dakota, South Dakota, Nebraska, Utah, New Mexico, Wyoming, Colorado, Oregon, Montana, Kansas and Oklahoma.

[9/] Channels thus expressly reserved for future disposition are employed by stations in Nashville, Cincinnati, Dallas-Fort Worth, Louisville, New Orleans, Des Moines, Salt Lake City, San Antonio, Los Angeles, Minneapolis and Atlanta.

Class I-A stations (R. 4934). In short, it recognized in deed as well as in word that the problem of future disposition of the clear channels was "not easy" (R. 4930); that "much can be said for numerous alternative approaches" (R. 4125); that either of the two basic policy alternatives - duplication or higher power - "leaves much to be desired" (R. 4929) but that "on balance, the adopted solution represents the best result available at this time" (R. 4945), and that it would be unwise to carry out a precipitate reallocation of the clear channels "without opportunity to review and evaluate, as we go along," the effectiveness of the changes made at this time (R. 4092). Such a painstakingly justified determination is the very opposite of arbitrariness and capriciousness.

B. In Particular, the Commission's Decision With Respect To 760 kc Was Valid.

There is no foundation for the argument that the portion of the Commission's decision relating specifically to 760 kc was arbitrary or capricious. The Commission was well aware of the history of KFMB's 540 kc operations - its own assurance to KFMB of its confidence that the assignment of KFMB to 540 kc could be upheld despite Mexican claims, KFMB's shift to 540 kc in reliance on that assurance and the trade of 540 kc to Mexico (with KFMB as the "sacrificial lamb", *supra*, p. 3) to obtain for the United States - as the Commission itself put it - the "advantages deriving from the provisions of the [United States-Mexico] Agreement for reciprocal protection on all AM broadcast frequencies" (R. 4114).

It is thus understandable that WJR has nowhere suggested in its brief that the Commission should not have found an appropriate substitute frequency for KFMB. Rather, WJR urges only that KFMB should be provided a frequency other than the frequency of WJR. Thus, WJR contends that the Commission did not give sufficient consideration to shifting KFMB to 550 kc (Brief for Appellants- Petitioners, p. 40), that the Commission failed to give adequate consideration to assigning KFMB to some frequency above 760 kc other than a Class I-A frequency (Id., pp. 40-41) and that the Commission erred in selecting 760 kc rather than the clear channel frequency 830 kc (Id., p. 41).

But the Commission expressly found that the "relatively uncluttered" Class I-A frequencies offered the appropriate solution for an equitable substitute channel for KFMB (R. 4114-15). In particular, as to 550 kc, the Commission pointed out that on that frequency much of KFMB's signal "would be wasted over the Pacific Ocean,"[10/] noting that KFMB's studies showed that on 550 kc the area receiving service from KFMB would be cut to some 10% of its existing service area in the daytime and some 58% at night (R. 4935).[11/]

After a "painstakingly careful review of all the availabilities" - which took into account "requirements of protection to Mexican stations on other

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[10/] Because of the necessity of protecting two 550 kc stations in Bakersfield, California, and Phoenix, Arizona, KFMB on 550 kc would have to directionalize its signal to the south and west of San Diego (R. 4935).

[11/] WJR contends that its engineering study "showed that KFMB could be assigned to 1000 kc" (Brief for Appellants-Petitioners, p. 41). But in fact the record shows that WJR did no more than venture, in its Petition for Reconsideration, the observation that "there appear to be some technical possibilities for operation on 1000 kc" (R. 4377). Both KFMB and another party showed these "possibilities" to be negligible (R. 4645-46, 4710-13). It is significant that neither in its comments nor in its reply comments nor in its Petition for Reconsideration did WJR suggest that any non-Class I-A frequency was available for KFMB other than 550 kc and the tentative suggestion with respect to 1000 kc.

Class I-A channels, the availabilities of some other Class I-A clear channels for new Class II-A stations at other places in the United States, domestic and Canadian co-channel and adjacent-channel limitations on the allocation of individual Class I-A clear channels, and related considerations" – the Commission found further that, among the clear channels, "760 kc is the preferable choice" as a substitute channel for KFMB (R. 4115), if not the "only I-A frequency available" (R. 4935).

Thus, WJR's contention reduces itself to the proposition that the Commission erred in failing to assign three stations to 830 kc rather than assigning two stations to 760 kc. WJR may regard the reason for the Commission's action as "insubstantial". But the Commission in exercising its responsibility for establishing sound allocation policies made detailed findings supporting its general policy conclusion that, at least until it has had further experience with the sharing of Class I-A clear channel frequencies, sound public policy requires for the present that no more than one station in addition to the Class I-A station should be permitted to operate on any such channel at night. Moreover, the Commission expressly found a special situation with respect to the frequency 830 kc, which is used for limited nighttime operations by a municipally owned and operated station at New York City (R. 4114, 4936), and the Commission specifically concluded that a further and unlimited time operation by KFMB should not be permitted on 830 kc (R. 4935).

Nor does the Commission's action with respect to 760 kc violate § 307(b) of the Act, 49 Stat. 1475, 47 U.S.C. § 307(b). It is neither unfair nor inequitable to make available to the people of Southern California an equivalent substitute for service traded away in the national interest to Mexico by assigning a frequency used by WJR, located in Detroit 1,970 miles away (R. 4374). And it is not inefficient to employ the 760 kc channel to provide two effective services instead of one, in preference to 550 kc where KFMB's signal would be wasted over the Pacific and its service drastically reduced.

In short, Appellants-Petitioners are asking this Court to substitute its judgment for that of the Commission with respect to intricate technical questions of the proper use of the 25 Class I-A radio frequencies. Their contention is essentially a repetition of the two fundamental policy arguments advanced to the Commission over and over again in the proceeding below – that the Commission should permit no nighttime sharing of the Class I-A channels and should allow all Class I-A stations to increase their power from 50 kw to 750 kw. Their position reduces itself to the proposition that the Communications Act affirmatively commands the Commission to adopt the method of allocation of Class I-A channels advocated by them and no other; for they ask this Court to direct the Commission to provide for the combination of non-duplication and "superpower" for which they press. No citation of authority is required for the proposition that this Court will not undertake to perform the FCC's function of technical evaluation and allocation of radio service, especially when that function is being discharged in the careful and reasoned manner of this proceeding.

II. WJR HAS ALREADY HAD – AND FAILED TO AVAIL ITSELF OF – AN OPPORTUNITY FOR AN EVIDENTIARY HEARING. IT MAY NOT NOW COMPLAIN THAT IT HAS BEEN DEPRIVED OF SUCH A HEARING.

WJR's contention that it is now entitled to an evidentiary hearing on authorization of a full time station on 760 kc in San Diego (Brief for Appellants-Petitioners, pp. 42-49) does not stand analysis.

WJR's license was due to expire on October 1, 1961. In June, 1961, while the proceedings before the Commission were pending, WJR filed an application for renewal of its license. On September 14, 1961, the Commission released its Report and Order which provided, among other things, for KFMB to share 760 kc with WJR. On October 4, 1961, a renewed license was issued to WJR, conditioned that operation thereunder was subject to whatever interference might be caused outside of its 0.5 mv/m 50% skywave contour by a co-channel unlimited time Class II station in San Diego pursuant to the September 14, 1961, Report and Order in the Clear Channel proceeding – conditioned in other words on WJR's sharing 760 kc with KFMB in the manner provided in the clear channel proceeding (R. 5032-33). WJR accepted the license as thus conditioned and did not avail itself of the specific procedure afforded by Section 1.64 of the Commission's Rules, 47 C.F.R. § 1.64, to challenge the condition and obtain a hearing with respect thereto. To the extent WJR was entitled to an evidentiary hearing on the question whether it should share the channel with KFMB, WJR has already had and has passed up its opportunity for such a hearing in accordance with the orderly procedures of the Commission.

When WJR's conditional license was issued, its rights were clear and explicit. Under § 1.64 of the Commission's Rules, 47 C.F.R. § 1.64, an applicant in WJR's position, whose application has been granted "with any . . . conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently granted," may within 30 days file a written request rejecting the grant as made and "upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing." If WJR wanted to assert a right to an adjudicatory hearing before being required to share 760 kc, that was the time to do so. Had it demanded a hearing and received it the matter could have been explored and resolved promptly. Had it demanded a hearing and been refused it could have sought judicial review of the refusal.

WJR chose not to avail itself of its rights under Section 1.64 but instead filed a Petition for Reconsideration and Conditional Request for Evidentiary Hearing in the rule making proceeding in which it alluded to the conditioned renewal (R. 4364-65) and attempted to preserve its right to an evidentiary hearing on the duplication of 760 kc which had been provided for in the September, 1961, Report and Order in the event that reconsideration of that Report and Order was denied (R. 4363-67). In this Petition for Reconsideration WJR asserted that the Commission had erred in determining that thirteen of the Class I-A clear channel frequencies, including 760 kc, should be duplicated and in concluding that superpower for the Class I-A clear channel stations should not be authorized. (R. 4359-61). It urged further that, in the event the Commission, upon reconsideration, reaffirmed its policy determination with respect to these two matters, it had the right to an evidentiary hearing to show that duplication of 760 kc was not in the public interest (R. 4362). It contended that the rule making decision amounted to a modification of its license and that thus, if reconsideration was denied, it was entitled to a reasonable opportunity to show why the 760 kc action was contrary to the public interest (R. 4363) and that the rule making proceeding was no substitute for an adjudicatory hearing on the duplication of 760 kc (R. 4364). It very clearly stated that, although the burden of proof in such a hearing would appear to be on the Commission, WJR was fully prepared to go forward at such a hearing with the introduction of evidence to show that, regardless of the ultimate merits of the duplication of the 12 other Class I-A frequencies, provision for a second station on 760 kc at San Diego was contrary to the public interest (R. 4368) and, finally, it contended that its right to an evidentiary hearing was not abridged by the condition included in its renewed license (R. 4364-65).

Under these circumstances, it is submitted that WJR may not complain, indeed, is estopped from complaining, that it has been deprived of an evidentiary hearing. WJR had a full opportunity to challenge the condition in its renewed license and to seek a full evidentiary hearing on the matter of duplication of 760 kc. Instead, it chose not to pursue this remedy. It is indeed paradoxical that WJR is now appealing for the right to the very type of evidentiary hearing which WJR could have had by the simple expedient of pursuing the remedy available to it under Section 1.64 of the Commission's Rules.

In its brief WJR makes the untenable argument that the condition attached to its renewal constituted an attempt to deny the WJR application "without the requisite adjudicatory hearing that had been demanded[12] by WJR . . . in [its] petition for reconsideration directed against the 1961 Order" (Brief, p. 45). The simple fact of the matter is, as demonstrated above, that WJR elected not to pursue the remedy afforded by the Commission's rules to obtain an evidentiary hearing. Moreover, it is ironical that WJR complains in its April 1, 1963, brief that it was deprived of an evidentiary hearing, for had it pursued the remedy available to it under the Commission's rules in October, 1961, any such hearing would have been long since over!

Administrative rights, like other rights, must be asserted in an orderly fashion to be preserved. Cf. United States v. Tucker Truck Lines, 344 U.S. 33 (1952). WJR cannot have it both ways. It had either to accept the conditioned license which was granted it in October, 1961, or to assert its rights to a hearing on the conditioned grant. It cannot postpone an unwanted result by concentrating on the rule making till that proceeding is squeezed dry and then asserting a right which it long since failed to pursue.[13]

III. IN ANY EVENT, WJR WAS NOT DENIED THE TYPE OF HEARING THAT WAS GIVEN THE LICENSEE IN THE TRANSCONTINENT CASE.

Although asserting rights to an adjudicatory hearing, WJR contends that the proceeding before the Commission was "a general, industry-wide investigation affecting numerous existing licensees" in which "WJR was never given notice or opportunity to present comments, documents, data, reply comments or alternative proposals to any specific proposal to assign KFMB, San Diego, California, to WJR's assigned frequency" and hence that the Commission denied it the hearing which, it states, this Court found sufficient in the Bakersfield deintermixture case, Transcontinent Television Corporation v. FCC, 113 App. D.C. 384, 308 F.2d 339 (1962). (Brief for Appellants-Petitioners, pp. 47-48).

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[12] The tense of the verbal phrase used in the brief is, we are sure, unintentionally incorrect. The Petition for Reconsideration was filed after and not before the conditioned renewal was issued.

[13] WJR advances in addition a tenuous argument that because its renewal application was filed prior to the Commission's 1961 Report and Order it froze the status of its license as against changes in the status of 760 kc which might be made thereafter. (Brief for Appellants-Petitioners, pp. 48-49). The short answer to this is likewise that the conditioned renewal was granted in response to this application and if WJR wished to contest this disposition of its application it could and should have done so.

The record does not support this contention.

In the first place, WJR's position might have some validity if this had been a sweeping proceeding involving, say, an across-the-board change in the frequencies or operations of all or a large number of stations. In such a case a specific licensee's contentions could well be lost in the wholesale policy determination, effectively denying it a real hearing as a practical matter. But that was not the situation here. The proceeding involved only the use of 25 standard broadcast channels occupied by 26 Class I-A stations out of a total of some 3300 AM stations (R. 4). The Commission dealt with each of the 25 Class I-A frequencies individually, enumerating each one and justifying its decision whether or not to duplicate it and, if so, the optimum assignment of the duplicating station. (R. 4098-99, 4113-23, 4929-40).

In the second place, WJR not only had repeated notice and opportunities to make relevant submissions on the question whether it should share 760 kc and, if so, whether it should share it with KFMB; it took advantage of its opportunities. Through CCBS it filed reply comments in the 1958 phase of the proceeding which contended that the counterproposal to allow KFMB to share 760 kc was undesirable (R. 1439). On its own behalf it filed reply comments in the 1960 phase of the proceeding in which it contended that the KFMB counterproposal should not be adopted (R. 3514-16, 3518). In addition, CCBS on WJR's behalf in reply comments in the 1960 phase of the proceeding again took note of the KFMB proposal. (R. 3672). In opposing a petition by another party for leave to file supplemental comments after the record was closed WJR again took the opportunity to oppose the KFMB counterproposal and pointed to its earlier pleadings as having "specifically" pointed out alleged defects in it (R. 4015-17). WJR's petition for reconsideration was almost entirely devoted to the question of KFMB's sharing 760 kc (R. 4357-80). In addition, CCBS's petition for reconsideration likewise objected to the Commission's disposition of 760 kc. (R. 4222). And in a response to pleadings filed in response to the 1961 Report and Order CCBS supported the objection to the 760 kc assignment which another party had voiced in a petition for reconsideration. (R. 4688). In the light of these opportunities for comprehensive canvassing of the matter it cannot be seriously contended that WJR was not afforded notice of,and every chance to address itself to, the precise issues involved.

WJR contends that the Commission's determination with respect to 760 kc was procedurally defective because it stemmed from a counterproposal rather than from a proposal specifically advanced by the Commission in the first instance. This is not the law. Particularly where, as here, the Further Notice expressly invited comments from interested parties who were of the opinion that the proposals "should not be adopted in the form set forth herein" (R. 28) and the Third Notice expressly contemplated "counterproposals" (R. 1800), there is no substance in the contention that the

Commission's action on 760 kc was invalid because taken in response to a counterproposal. Owensboro on the Air, Inc. v. United States, 104 App. D.C. 391, 262 F.2d 702 (1958), cert. denied, 360 U.S. 911 (1959). Otherwise no proposed rule could ever be adopted differing from the original proposal without holding a further proceeding. See Logansport Broadcasting Corp. v. United States, 93 App. D.C. 342, 210 F.2d 24 (1954); cf. United States v. Wrightwood Dairy Co., 127 F.2d 907 (7th Cir.), reversed on other grounds, 315 U.S. 110 (1942). At least from the time KFMB filed its direct comments in the 1958 proceeding WJR was on notice that the duplication of 760 kc at San Diego was being advanced and might be adopted. Indeed, in the Third Notice in 1959 the Commission specifically proposed duplication of 760 kc (R. 1801) and its final decision differed from its proposal only in changing the location of the duplicating station from Idaho to the more distant San Diego. WJR thus cannot seriously contend that it was misled, let alone misled to its prejudice. Cf. Willapoint Oysters v. Ewing, 174 F.2d 676, 685 (9th Cir.), cert. denied, 338 U.S. 860 (1949).

IV. THE COMMISSION'S ACTION IN RETURNING "SUPERPOWER" APPLICATIONS WAS VALID.

WJR and WGN contend that under Section 309(e) of the Communications Act, 74 Stat. 891, 47 U.S.C. § 309(e), and under dicta of the Supreme Court in United States v. Storer Broadcasting Co., 351 U.S. 192 (1956), the Commission was bound to accept their "superpower" applications and hold a hearing on them. (Brief for Appellants-Petitioners, pp. 49-53). But all Storer says is that Section 309(e) requires a hearing if the applicant alleges reasons sufficient, if true, to justify a waiver of a rule. It does not purport to say what constitutes a sufficient reason to justify such a waiver in any particular case. A more compelling showing may well be required in one situation than in another. A request for waiver of a comparatively minor rule such as, say, the type of transmitter to be used by a station[14] would normally demand less compelling reasons than a request for waiver of a far-reaching fundamental principle.

Here the rule which WJR and WGN asked the Commission to waive was the fundamental allocation rule governing the power to be used by stations. The reasons advanced were substantially the same as those the Commission had dealt with at length in the rule making proceeding: the existence of "white areas"; the alleged inadequacy of the Commission's action in the rule making proceeding; the effect of a 1962 resolution of the House of Representatives, and the asserted benefits of "superpower" with respect to "white area" service, defense communications, civil defense and disaster communications and inter-American understanding. (R. 5044-67). The Commission had already given exhaustive consideration to these contentions in the rule making proceeding and found them inadequate at this time to justify general authorization of "superpower". It found them no more adequate to justify individual waivers of its rules (R. 5072).

Moreover, the Commission stated, as it stated simultaneously in its action denying reconsideration in the clear channel rule making proceeding, that it was desirable for further study to be made regarding "superpower" and suggested that the advocates of "superpower" could more appropriately present their case by a petition for rule making rather than by attempting to obtain consideration of individual applications inconsistent with the present 50 kw power limitation. It expressed its opinion that orderly procedure required evaluation of the merits of "superpower" prior to firm commitment to that course of action on individual applications so that its rules could be amended to spell out the conditions and circumstances under which such operations may be authorized in the public interest if it is determined that such a course will serve the public interest. Under all the circumstances the Commission concluded that there had not been a sufficient showing to warrant waiver of its rules. Storer requires no more.

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[14] This was the rule involved in City of New York Municipal Broadcasting System v. FCC, 96 App. D.C. 172, 223 F.2d 637 (1955), cited by Appellants-Petitioners. Moreover, that case was decided after Storer was decided in this Court, 95 App. D.C. 97, 220 F.2d 204 (1955), but before the reversal by the Supreme Court and it leaned on the later-reversed opinion below in Storer.

Respectfully submitted,

ERNEST W. JENNES

THADDEUS HOLT

701 Union Trust Building
Washington 5, D. C.

Attorneys for Intervenor
Transcontinent Television Corporation

Of Counsel:

Covington & Burling

April 29, 1963

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BRIEF OF WESTINGHOUSE BROADCASTING COMPANY, INC., INTERVENOR

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,500 September Term, 1962

THE GOODWILL STATIONS, INC., and WGN, INC.,
Petitioners.

v.

FEDERAL COMMUNICATIONS COMMISSION and
UNITED STATES OF AMERICA,
Respondents.

CITY OF NEW YORK MUNICIPAL
BROADCASTING SYSTEM,
Intervenor.

AMERICAN BROADCASTING-PARAMOUNT
THEATRES, INC., WXYZ, INC., and WLS, INC.,
Intervenors.

WESTINGHOUSE BROADCASTING
COMPANY, INC.,
Intervenor.

ON APPEAL FROM A DECISION AND ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION

JOHN W. STEEN
40 Wall Street
New York 5, N. Y.
Counsel for Intervenor,
Westinghouse Broadcasting
Company, Inc.

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 4 1963

Nathan J. Paulson
CLERK

Statement of Question Presented

Did the Commission's Orders adopted September 13, 1961 and November 21, 1962 in Docket 6741 terminating a proceeding commenced as a general hearing to resolve issues, among others, raised by the fact that large areas of the U. S. were without primary standard broadcast service and by applications for power in excess of 50 kw and for operation of additional stations on Class I-A Clear Channel frequencies:

> (a) Violate Section 307(b) or Section 303(f) of the Communications Act by authorizing one additional station to operate day and night on each of 13 of the 25 Class I-A frequencies and by refusing to amend the rule limiting the power of Class I-A stations to 50 kw, thus providing improved nighttime service to a maximum of only 600,000 of the over 25 million people living in over half of the land area of the continental U. S. who do not receive a single acceptable nighttime primary service and denying improved nighttime service to almost 25 million people by refusing to authorize Class I-A stations to operate with power in excess of 50 kw?
>
> (b) Erroneously fail to give due consideration to H. Res. 714 passed July 2, 1962 which expressed the sense of the House of Representatives that (1) the Commission was free, notwithstanding a 1938 Senate Resolution to the contrary, to authorize power in excess of 50 kw, if found to be in the public interest, and (2) the Commission should not authorize any additional fulltime stations on any of the 25 Class I-A frequencies for a period of a year so that the Commission would have an opportunity to reconsider its September 13, 1961 Order in light of H. Res. 714 and so that Class I-A stations would have an opportunity to file applications for higher power?

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*S. Res. 294, 75 Cong., 3d Sess. and H. Res. 714, 87th Cong., 2d Sess., 1 Pike & Fischer RR (Part One) 10:175 11

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*Cases or authorities chiefly relied upon are marked by asterisks.

United States Court of Appeals

For the District of Columbia Circuit

No. 17,500 September Term, 1962

The Goodwill Stations, Inc., and WGN, Inc.
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v.

Federal Communications Commission and
United States of America,
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City of New York Municipal Broadcasting System,
Intervenor.

American Broadcasting-Paramount Theatres, Inc.,
WXYZ, Inc., and WLS, Inc.,
Intervenors.

Westinghouse Broadcasting Company, Inc.
Intervenor.

BRIEF OF WESTINGHOUSE BROADCASTING COMPANY, INC., INTERVENOR

Statement of the Case

The case arises out of a proceeding instituted by the Commission on February 20, 1945, largely as a result of insistent claims that the clear channel concept of permitting only one station to operate at night on 25 of the 107 channels available for standard broadcasting is wasteful of available spectrum space and otherwise not in the best interests of efficient utilization of the frequencies involved. Intervenor submitted comments pursuant to the Public Notices released by the Commission.

On September 13, 1961 the Commission issued a final Report and Order amending its Rules relating to the classification, location and use of the Class I-A channels.[1] In particular, the Commission amended Rule § 3.22 assigning one Class II-A station to each of the thirteen channels therein listed with the Class II-A station to be located in the Western state designated in the table of assignments. Intervenor is the licensee of three Class I-A stations enumerated in the table of assignments: 1020 kc, KDKA (Pittsburgh); 1030 kc, WBZ (Boston); and 1100 kc, KYW (Cleveland), on which frequencies one Class II-A station was assigned for use in New Mexico, Wyoming and Colorado, respectively. The Commission declined to change the rules affecting the use of the remaining twelve Class I-A channels and specifically declined to remove the maximum power limitation of 50 kilowatts applicable to all stations.

Intervenor petitioned the Commission for reconsideration on the ground that the Commission's order was a violation of § 307(b) of the Communications Act of 1934, as amended. Intervenor contended that the allocation of a single Class II-A station to each of the thirteen Class I-A channels was an inefficient and wasteful use of spectrum space; that the location selected by the Commission for each of the additional stations did not constitute an equitable distribution of radio frequencies among the several states; and that a breakdown of the thirteen selected Class I-A channels accompanied by a refusal to remove the power limitations on the remaining twelve Class I-A channels foreclosed the Commission from ever making a "fair, efficient and equitable distribution . . . of power among the several states" as required by § 307(b) if and when the Commission should authorize higher power on some frequencies.

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[1] This order will be the one to which reference is made in this brief unless indicated to the contrary.

The Commission rejected Intervenor's contention and in doing so stated

> "The Commission is very much cognizant of 307 (b) considerations and every effort has been made to secure a fair, efficient and equitable distribution of facilities consistent with the achievement of the goals sought. In point of fact, an underlying consideration of this whole proceeding has been to bring service to areas now lacking in it—which is simply another way of saying we are trying to make the distribution more fair, efficient and equitable than it has been. To preclude this on the basis of some possible future difficulty in another connection would be unjustified. Moreover, we cannot agree that the contention has substance because our studies show that the group of channels selected for future consideration, if higher power is authorized, would provide four skywave services throughout the nation. By any reasonable interpretation we feel the standards of § 307(b) have here been fully complied with." (¶ 74 Order of November 21, 1962)

Statute Involved

The Communications Act of 1934, as amended, June 19, 1934, c. 652, Title III, § 303, 48 Stat. 1082: USC. Title 47 § 303.

"Except as otherwise provided in this Chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

* * * * * *

(d) Determine the location of classes of stations or individual stations;

* * * * * *

(g) Study the new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

(h) Have authority to establish areas or zones to be served by any station;"

AND SECTION 307

"(a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefor a station license provided for by this chapter.

(b) In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."

Statement of Points

I. The Commission's Allocation of One Additional Station on Each of Thirteen Selected Class I-A Channels for Use Within the States Selected Violates the Congressional Mandate Expressed in § 307(b) of the Act.

II. The Commission's Selection of the Number of New Stations and the Location of Each is Arbitrary, Capricious, and an Unreasonable Exercise of Administrative Discretion Having No Logical Relationship to the Facts.

III. The Commission's Partial Solution to the Basic Issue of Higher Power vs. Duplication Forecloses a Final Decision in the Public Interest.

IV. The Failure of the Commission to Give Effect to House Resolution 714 is an Abuse of Administrative Discretion.

Summary of Argument

§ 307(b) of the Communications Act of 1934, as amended, creates a mandate under which the Commission is required to make "such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same". This, and other sections of the Communications Act, as well as the legislative history of the Act and the decisions of the Courts sustaining previous Commission actions make it abundantly clear that the Commission may, pursuant to rule-making proceedings, allocate channels for certain types of usage and designate the states and communities within which the same may be used. However, the Commission cannot, as it has in this case, make an allocation of frequencies contrary to the statutory mandate.

The Congressional purpose in enacting the Communications Act was to control all interstate communication facilities for the benefit of "the public interest, convenience and necessity" and, in recognition of the interference problem inherent in the nature of radio propagation, to ensure a fair and equal distribution among the several states of the frequencies selected for such use. Contrary to the basic Congressional purpose, the Commission's limited selection of channels is arbitrary and capricious and an unreasonable exercise of administrative discretion having no logical relationship to the facts.

Moreover, the Commission has foreclosed itself from carrying out the statutory mandate in the future by breaking down a limited selection of channels without simultaneously determining the power and nature of the use that will be permitted on the remaining clear channels. The "piecemeal" approach to solving the national problem underlining the entire proceedings will thus control the final allocation of channels regardless of the public need and rights under § 307(b).

The Commission's order erroneously failed to give due consideration to H. Res. 714 passed July 2, 1962 which expressed the sense of the House of Representatives that (1) the Commission was free, notwithstanding a 1938 Senate Resolution to the contrary, to authorize power in excess of 50 kw, if, after consideration of all pertinent factors, including the objective of providing improved nighttime radio service to substantial areas and populations presently receiving inadequate nighttime radio service, an increase in maximum power is found to be in the public interest, and (2) the Commission should not authorize any additional full-time stations on any of the 25 Class I-A frequencies for a period of a year.

Argument

I

THE COMMISSION'S ALLOCATION OF ONE ADDITIONAL STATION ON EACH OF THIRTEEN SELECTED CLASS I-A CHANNELS FOR USE WITHIN THE STATES SELECTED VIOLATES THE CONGRESSIONAL MANDATE EXPRESSED IN § 307(b) OF THE ACT.

The Congressional purpose in adopting the Communications Act of 1934 was to regulate "interstate and foreign commerce in communication by wire and radio so as to make [service] available, so far as possible, to all of the people of the United States . . ." and, in order to carry out these purposes, Congress "created a Commission to be known as the 'Federal Communications Commission' . . . which shall execute and enforce the provisions of this chapter".[2] Congress specifically empowered the Commission to "determine the location of classes of stations or individual stations" and granted it authority to "establish areas or zones to be served by any station".[3] The authority thus granted, however, was circumscribed by the mandate that "the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power *among the several States and communities* as to provide a fair, efficient, and equitable distribution of radio service *to each* of the same".[4] (Emphasis supplied).

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[2] 47 USC § 151.

In the instant proceedings the Commission found:

> "More than half the total land area of the United States and perhaps as many as 25,000,000 people principally in northern New England, the more mountainous regions of the Middle Atlantic States, much of the South, the northernmost part of the Great Lakes area, within the Great Plains and the mountainous areas of the West, and in Alaska are estimated to be outside the range of usable nighttime groundwave service."[5]

On the basis of the need for improved service thus established, the Commission determined to break down thirteen Class I-A channels and assign one additional station to each channel for the purpose of creating additional nighttime groundwave service.

In the face of the finding that *seven* geographical areas of the United States were without adequate groundwave service the Commission elected to place one new station in Alaska and all of the others within a *single* geographical area—"the mountainous areas of the West"—and made *no* allocation to the other five geographical areas. As to population, the Commission first having found that "perhaps as many as 25 million people" were outside of the range of the usable nighttime groundwave service, placed all of the new stations in areas which contain a total population of less than one million and made *no* allocations to the areas within which reside the remaining 24 million who do not receive nighttime groundwave service.[6] Such a selection of channels and locations is contrary to the public interest and a violation of the Congresisonal mandate expressed in § 307(b) of the Act.

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[3] 47 USC § 303(d) and (h).

[4] 47 USC § 307(b).

[5] ¶6, FCC Order.

II

THE COMMISSION'S SELECTION OF THE NUMBER OF NEW STATIONS AND THE LOCATION OF EACH IS ARBITRARY, CAPRICIOUS, AND AN UNREASONABLE EXERCISE OF ADMINISTRATIVE DISCRETION HAVING NO LOGICAL RELATIONSHIP TO THE FACTS.

The Commission found that as a result of the development of new techniques involving the use of directional antennas with a high degree of suppression, it was now possible to protect the service areas of co-channel stations and therefore it is:

> "now possible, particularly in the case of Class I-A stations located in or near the northeast portion of the country, to assign additional co-channel unlimited time stations to provide needed service at distant locations, while preserving the capacity of the present station to provide a usable signal over wide primary and secondary service areas."[7]

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[6] Amended Rules § 3.22, Assignment of Class II-A Stations, ¶ 4, Appendix, FCC Order.

[7] ¶13 of FCC Order.

Notwithstanding this finding the Commission allocated a *single* Class II-A station to each of the thirteen Class I-A channels. The record amply proves (and the Commission reaches no conclusion to the contrary) that under the present state of the art as many as eight additional Class II stations could be assigned to some of the Class I-A channels by proper selection of location, power, and directional antennas, and they could furnish mutual protection to the existing Class I-A station and to each other. Failure to make such allocation, having first decided to break down thirteen Class I-A channels violates § 303(g) of the Act directing the Commission to "generally encourage the larger and more effective use of radio in the public interest",[8] and is contrary to the public interest.

III

THE COMMISSION'S PARTIAL SOLUTION TO THE BASIC ISSUE OF HIGHER POWER vs. DUPLICATION FORECLOSES A FINAL DECISION IN THE PUBLIC INTEREST.

The Commission first found that approximately 25 million people living in seven distinct geographical areas of the United States received no nighttime groundwave service and improvement of such service would be achieved only through a more efficient use of the clear channels. One method was to increase the power of the Class I-A stations to provide an improved skywave signal. The conflicting view contended for an increase in the number of unlimited time stations on the clear channels. "The clear channel inquiry was instituted against this background of conflict between the basic alternatives of higher power vs. duplication."[9] The Commission decided to break down thirteen of the clear channels as a partial solution of the basic issue but did not decide whether or not increased power would be authorized for use by the remaining twelve clear channels. As a result of this partial decision, high power cannot be used on any of the thirteen clear channels to which Class II-A stations have now been assigned because such increased power would result in destructive interference.

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[8] 47 USC § 303(g).

[9] ¶8 of FCC Order.

WBZ (Boston, Massachusetts), operated on 1030 kc, is the only clear channel station in the six states comprising the New England geographical area, found by the Commission to be one of the seven geographical areas receiving inadequate nighttime groundwave service. Amended Rule § 3.22 assigns a Class II-A station on this frequency in the state of Wyoming. Therefore, contrary to the provisions of § 307(b) of the Act, this allocation forecloses the Commission from ever authorizing power substantially in excess of 50 kw for use in the New England geographical area. It is no answer to say that as a matter of procedure the Commission rule is subject to waiver upon petition showing good cause since Station WBZ will not be able, as a practical matter, to use high power for the purpose of improving its service to the presently underserved areas located in the six states comprising the New England geographical area.

IV

THE FAILURE OF THE COMMISSION TO GIVE EFFECT TO HOUSE RESOLUTION 714 IS AN ABUSE OF ADMINISTRATIVE DISCRETION.

The Federal Communications Commission is a creature of Congress through which Congress attempts to carry out the "public convenience, interest, and necessity" by maintaining control of the United States over all channels of interstate and foreign radio transmission. The desire of Congress to maintain continuing supervision is clearly established by the Act and particularly evident by the detailed annual reports the Commission is required to make to Congress.[10]

The Commission gave recognition to this Congressional supervisory authority when, in 1938, it adopted rules establishing a maximum radio power of 50 kw following the adoption of a resolution by the Senate that it was the sense of the Senate that such should be the power limitation.

On July 2, 1962 the House of Representatives passed Resolution 714 which expressed the sense of the House of Representatives that

1. The Commission was free, notwithstanding the 1938 Senate resolution to the contrary, to authorize power in excess of 50 kw, if after consideration of all pertinent factors, including the objective of providing improved nighttime radio service to substantial areas and populations presently receiving inadequate nighttime radio service, an increase in maximum power be found to be in the public interest, and
2. The Commission should not authorize any additional fulltime station on any of the 25 Class I-A frequencies for a period of a year.[11]

Admittedly a resolution of the House of Representatives does not have the effect of law. However, the Commission's recognition of a resolution adopted by the Senate in 1938 and its failure to recognize the resolution by the House of Representatives adopted in 1962 is not only inconsistent, but, in the latter case, so unresponsive to the basic purposes and control provisions of the Communications Act as to constitute an abuse of administrative discretion.

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[10] 47 USC § 154(k).

[11] 1 Pike & Fischer RR p. 10:175.

CONCLUSION

The Commission may classify stations and determine their locations and power provided that such determinations conform to the requirements of the Communications Act of 1934. In this case, the Commission: (1) failed to carry out the Congressional mandate requiring a fair, efficient, and equitable distribution among the several States and communities; (2) foreclosed a future decision on the use of higher power in accordance with the Act by presently removing thirteen clear channels from such consideration; and (3) abused its administrative discretion by failing to give effect to House Resolution 714. Accordingly, we submit to this Court that the decision of the Commission should be reversed and set aside.

Respectfully submitted,

WESTINGHOUSE BROADCASTING
COMPANY, INC.
40 Wall Street
New York 5, New York

JOHN W. STEEN,
Counsel

April 1, 1963

BRIEF OF WESTINGHOUSE BROADCASTING COMPANY, INC., INTERVENOR

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,500 September Term, 1962

The Goodwill Stations, Inc., and
WGN, Inc.
Petitioners.

v.

Federal Communications Commission and
United States of America,
Respondents.
City of New York Municipal Broadcasting
System,
Intervenor.
American Broadcasting-Paramount
Theatres, Inc., WXYZ, Inc., and WLS, Inc.,
Intervenors.
Westinghouse Broadcasting Company, Inc.
Intervenor.

On Appeal from a Decision and Order of the Federal Communications Commission

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 1 1963

Nathan J. Paulson
CLERK

John W. Steen
40 Wall Street
New York 5, N. Y.
Counsel for Intervenor,
Westinghouse Broadcasting
Company, Inc.

STATEMENT OF QUESTION PRESENTED

Did the Commission's Orders adopted September 13, 1961 and November 21, 1962 in Docket 6741 terminating a proceeding commenced as a general hearing to resolve issues, among others, raised by the fact that large areas of the U. S. were without primary standard broadcast service and by applications for power in excess of 50 kw and for operation of additional stations on Class I-A Clear Channel frequencies:

(a) Violate Section 307(b) or Section 303(f) of the Communications Act by authorizing one additional station to operate day and night on each of 13 of the 25 Class I-A frequencies and by refusing to amend the rule limiting the power of Class I-A stations to 50 kw, thus providing improved nighttime service to a maximum of only 600,000 of the over 25 million people living in over half of the land area of the continental U. S. who do not receive a single acceptable nighttime primary service and denying improved nighttime service to almost 25 million people by refusing to authorize Class I-A stations to operate with power in excess of 50 kw?

(b) Erroneously fail to give due consideration to H. Res. 714 passed July 2, 1962 which expressed the sense of the House of Representatives that (1) the Commission was free, notwithstanding a 1938 Senate Resolution to the contrary, to authorize power in excess of 50 kw, if found to be in the public

interest, and (2) the Commission should not authorize any additional fulltime stations on any of the 25 Class I-A frequencies for a period of a year so that the Commission would have an opportunity to reconsider its September 13, 1961 Order in light of H. Res. 714 and so that Class I-A stations would have an opportunity to file applications for higher power?

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,498 September Term, 1962

The Goodwill Stations, Inc.,
Appellant,

v.

Federal Communications Commission,
Appellee.
Transcontinent Television Corporation,
Intervenor.
Midwest Radio-Television, Inc.,
Intervenor.
American Broadcasting-Paramount
Theatres, Inc. and WXYZ, Inc.,
Intervenors.

No. 17,499

WGN, Inc.,
Appellant,

v.

Federal Communications Commission,
Appellee.
Transcontinent Television Corporation,
Intervenor.
Midwest Radio-Television, Inc.,
Intervenor.
American Broadcasting-Paramount
Theatres, Inc. and WLS, Inc.,
Intervenors.

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System,
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Theatres, Inc., WXYZ, Inc., and WLS, Inc.,
Intervenors.
Westinghouse Broadcasting Company, Inc.,
Intervenor.

On Appeal from a Decision and Order of the
Federal Communications Commission

BRIEF OF WESTINGHOUSE BROADCASTING COMPANY, INC., INTERVENOR

STATEMENT OF THE CASE

The case arises out of a proceeding instituted by the Commission on February 20, 1945, largely as a result of insistant claims that the clear channel concept of permitting only one station to operate at night on 25 of the 107 channels available for standard broadcasting is wasteful of available spectrum space and otherwise not in the best interests of efficient utilization of the frequencies involved. Intervenor submitted comments pursuant to the Public Notices released by Commission.

On September 13, 1961 the Commission issued a final Report and Order amending its Rules relating to the classification, location and use of the Class I-A channels. 1/ In particular, the Commission amended Rule §3.22 assigning one Class II-A station to each of the thirteen channels therein listed with the Class II-A station to be located in the Western state designated in the table of assignments. Intervenor is the licensee of three Class I-A stations enumerated in the table of assignments: 1020 kc, KDKA (Pittsburgh); 1030 kc, WBZ (Boston); and 1100 kc, KYW (Cleveland), on which frequencies one Class II-A station was assigned for use in New Mexico, Wyoming and Colorado, respectively. The Commission declined to change the rules affecting the use of the remaining twelve Class I-A channels and specifically declined to remove the maximum power limitation of 50 kilowatts applicable to all stations.

Intervenor petitioned the Commission for reconsideration on the ground that the Commission's order was a violation of §307(b) of the Communications Act of 1934, as amended. Intervenor contended that the allocation of a single Class II-A station to each of the thirteen Class I-A channels was an inefficient and wasteful use of spectrum space; that the location selected by the Commission for each of the additional stations did not constitute an equitable distribution of radio frequencies among the

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1/ This order will be the one to which reference is made in this brief unless indicated to the contrary.

several states; and that a breakdown of the thirteen selected Class I-A channels accompanied by a refusal to remove the power limitations on the remaining twelve Class I-A channels foreclosed the Commission from ever making a "fair, efficient and equitable distribution" ... "of power among the several states" as required by §307(b) if and when the Commission should authorize higher power on some frequencies.

The Commission rejected Intervenor's contention and in doing so stated

> "The Commission is very much cognizant of 307(b) considerations and every effort has been made to secure a fair, efficient and equitable distribution of facilities consistent with the achievement of the goals sought. In point of fact, an underlying consideration of this whole proceeding has been to bring service to areas now lacking in it--which is simply another way of saying we are trying to make the distribution more fair, efficient and equitable than it has been. To preclude this on the basis of some possible future difficulty in another connection would be unjustified. Moreover, we cannot agree that the contention has substance because our studies show that the group of channels selected for future consideration, if higher power is authorized, would provide four skywave services throughout the nation. By any reasonable interpretation we feel the standards of §307(b) have here been fully complied with." (¶74 Order of November 21, 1962)

SUMMARY OF ARGUMENT

§307(b) of the Communications Act of 1934 as amended creates a mandate under which the Commission is required to make "such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient and equitable distribution of radio service to each of the same". This, and other sections of the Communications Act, as well as the legislative history of the Act and the decisions of the Courts sustaining previous Commission actions make it abundantly clear that the Commission may, pursuant to rule-making proceedings allocate channels for certain types of usage and designate the states and communities within which the same may be used. However, the Commission cannot, as it has in this case, make an allocation of frequencies contrary to the statutory mandate.

The Congressional purpose in enacting the Communications Act was to control all interstate communication facilities for the benefit of "public interest, convenience and necessity" and, in recognition of the interference problem inherent in the nature of radio propagation, to ensure a fair and equal distribution among the several states of the frequencies selected for such use. Contrary to the basic Congressional purpose, the Commission's limited selection of channels is arbitrary and capricious and an unreasonable exercise of administrative discretion having no logical relationship to the facts.

Moreover, the Commission has foreclosed itself from carrying out the statutory mandate in the future by breaking down a limited selection of channels without simultaneously determining the power and nature of the use that will be permitted on the remaining clear channels. The "piecemeal" approach to solving the national problem underlining the entire proceedings will thus control the final allocation of channels regardless of the public need and rights under §307(b).

The Commission's order erroneously failed to give due consideration to H. Res. 714 passed July 2, 1962 which expressed the sense of the House of Representatives that (1) the Commission was free, notwithstanding a 1938 Senate Resolution to the contrary, to authorize power in excess of 50 kw, if, after consideration of all pertinent factors, including the objective of providing improved nighttime radio service to substantial areas and populations presently receiving inadequate nighttime radio service, an increase in maximum power is found to be in the public interest, and (2) the Commission should not authorize any additional full-time stations on any of the 25 Class I-A frequencies for a period of a year.

ARGUMENT

I

THE COMMISSION'S ALLOCATION OF ONE ADDITIONAL STATION ON EACH OF THIRTEEN SELECTED CLASS I-A CHANNELS FOR USE WITHIN THE STATES SELECTED VIOLATES THE CONGRESSIONAL MANDATE EXPRESSED IN §307(b) OF THE ACT.

The Congressional purpose in adopting the Communications Act of 1934 was to regulate "interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all of the people of the United States ... "and, in order to carry out these purposes, Congress "created a Commission to be known as the 'Federal Communications Commission' ... and which shall execute and enforce the provisions of this chapter". 2/ Congress specifically empowered the

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2/ 47 USCA §151.

Commission to "determine the location of classes of stations or individual stations;" and granted it authority to "establish areas or zones to be served by any station". 3/ The authority thus granted, however, was circumscribed by the mandate that "the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same". 4/ (Emphasis supplied).

In the instant proceedings the Commission found:

> "More than half the total land area of the United States and perhaps as many as 25,000,000 people principally in northern New England, the more mountainous regions of the Middle Atlantic states, much of the South, the northernmost part of the Great Lakes area, within the Great Plains and the mountainous areas of the West, and in Alaska are estimated to be outside the range of usable nighttime groundwave service." 5/

On the basis of the need for improved service thus established, the Commission determined to break down thirteen Class I-A channels and assign one additional station to each channel for the purpose of creating additional nighttime groundwave service.

In the face of the finding that seven geographical areas of the United States were without adequate groundwave service the Commission elected to place one new station in Alaska and all of the others within a single

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3/ 47 USCA §303(d) and (h)

4/ 47 USCA §307(b)

5/ ¶6, FCC Order

geographical area--"the mountainous areas of the West"--and made no allocation to the other five geographical areas. As to population, the Commission first having found that "perhaps as many as 25 million people" were outside of the range of the usable nighttime groundwave service, placed all of the new stations in areas which contain a total population of less than one million and made no allocations to the areas within which reside the remaining 24 million who do not receive nighttime ground wave service. 6/ Such a selection of channels and locations is contrary to the public interest and a violation of the Congressional mandate expressed in §307(b) of the Act.

II

THE COMMISSION'S SELECTION OF THE NUMBER OF NEW STATIONS AND THE LOCATION OF EACH IS ARBITRARY, CAPRICIOUS, AND AN UNREASONABLE EXERCISE OF ADMINISTRATIVE DISCRETION HAVING NO LOGICAL RELATIONSHIP TO THE FACTS.

The Commission found that as a result of the development of new techniques involving the use of directional antennas with a high degree of suppression, it was now possible to protect the service areas of co-channel stations and therefore it is:

> "now possible, particularly in the case of Class I-A stations located in or near the northeast portion of the country, to

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6/ Amended Rules §3.22, Assignment of Class II-A Stations, ¶4, Appendix, FCC order.

> assign additional co-channel unlimited time stations to provide needed service at distant locations, while preserving the capacity of the present station to provide a usable signal over wide primary and secondary service areas."7/

Notwithstanding this finding the Commission allocated a single Class II-A station to each of the thirteen Class I-A channels. The record amply proves (and the Commission reaches no conclusion to the contrary) that under the present state of the art as many as eight additional Class II stations could be assigned to some of the Class I-A channels by proper selection of location, power, and directional antennas, and they could furnish mutual protection to the existing Class I-A station and to each other. Failure to make such allocation, having first decided to break down thirteen Class I-A channels violates §303(g) of the Act directing the Commission to "generally encourage the larger and more effective use of radio in the public interest", 8/ and is contrary to the public interest.

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WBZ (Boston, Massachusetts), operated on 1030 kc, is the only clear channel station in the six states comprising the New England geographical area, found by the Commission to be one of the seven geographical areas receiving inadequate nighttime groundwave service. Amended Rule §3.22 assigns a Class II-A station on this frequency in the state of Wyoming. Therefore, contrary to the provisions of §307(b) of the Act, this allocation forecloses the Commission from ever authorizing power substantially in excess of 50 kw for use in the New

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The Commission gave recognition to this Congressional supervisory authority when, in 1938, it adopted rules establishing a maximum radio power of 50 kw following the adoption of a resolution by the Senate that it was the sense of the Senate that such should be the power limitation.

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CONCLUSION

The Commission may classify stations and determine their locations and power provided that such determinations conform to the requirements of the Communications Act of 1934. In this case, the Commission:

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[11] 1 Pike & Fischer RR p. 10:175

(1) failed to carry out the mandate requiring a fair, efficient, and equitable distribution among the several States and communities; (2) foreclosed a future decision on the use of higher power in accordance with the Act by presently removing thirteen clear channels from such consideration; and (3) abused its administrative discretion by failing to give effect to House Resolution 714. Accordingly, we submit to this Court that the decision of the Commission should be reversed and set aside.

Respectfully submitted,

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40 Wall Street
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JOHN W. STEEN,
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April 1, 1963